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In the Supreme Court of the United States

OCTOBER TERM, 1976

76-860

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, APPELLANT

v.

JOHN A. JOBST

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

JURISDICTIONAL STATEMENT

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the district court on remand (App. A, *infra*, pp. 1a-4a) is not yet reported. The earlier opinion of the district court (App. B, *infra*, pp. 5a-17a) is reported at 368 F. Supp. 909.

JURISDICTION

The judgment of the district court, reinstating its earlier judgment declaring Sections 202(d)(1)(D)

and 202(d)(5) of the Social Security Act unconstitutional as applied to appellee, was entered on July 27, 1976 (App. E, *infra*, pp. 23a-24a). A notice of appeal to this Court (App. C, *infra*, pp. 18a-20a) was filed on August 24, 1976. On October 13, 1976, Mr. Justice Blackmun extended the time for docketing the appeal to and including November 22, 1976, and on November 15, 1976, he further extended the time to and including December 22, 1976. The jurisdiction of this Court is conferred by 28 U.S.C. 1252.

QUESTION PRESENTED

Whether Sections 202(d)(1)(D), 202(d)(5), and 202(s)(2) of the Social Security Act, which provide that secondary social security benefits received by a disabled dependent child of an insured wage earner shall terminate when the child marries an individual who is not entitled to benefits under the Act, are consistent with the Due Process Clause of the Fifth Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall be • • • deprived of • • • property, without due process of law • • •.

The relevant provisions of Section 202 of the Social Security Act, 49 Stat. 623, as amended, 42 U.S.C. (and Supp. V) 402, are set forth in App. D, *infra*, pp. 21a-22a.

STATEMENT

1. Under Section 202(d) of the Social Security Act, 49 Stat. 623, as amended, 42 U.S.C. (and Supp. V) 402(d), child's insurance benefits are provided to the dependent children of wage earners who receive old-age or disability benefits or who died fully or currently insured under the Act.[1] To be entitled to child's insurance benefits, the dependent child at the time of his application must be unmarried and either under 18 years of age (or a full time student under age 22) or under a disability which began before he attained age 22. Section 202(d)(1)(B) of the Act, as amended, 42 U.S.C. (Supp. V) 402(d)(1)(B).

Section 202(d)(1)(D) of the Act, as amended, 42 U.S.C. (Supp. V) 402(d)(1)(D), provides that child's insurance benefits shall terminate when the child marries. There is, however, a limited exception to this general provision for a disabled child who marries an individual also entitled to one of several categories of insurance benefits under the Act. Sections 202(d)(5) and 202(s)(2) of the Act, 42 U.S.C. (and Supp. V) 402(d)(5) and 402(s)(2).[2] But a disabled child who marries an individ-

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[1] Child's insurance benefits, like the other categories of benefits paid to members of the wage earner's family under Title II of the Act on the basis of the wage earner's primary social security account, are referred to as "secondary" insurance benefits.

[2] Section 202(d)(5) on its face appears to state a general rule applicable to all dependent children, but Section 202(s)

ual who is not entitled to benefits under the Act falls outside that exception; that disabled child's benefits, like those of nondisabled children, are terminated by marriage.

2. Appellee John A. Jobst, who has been disabled since birth from cerebral palsy, was awarded child's insurance benefits in 1957, at age 25, upon the death of his father, who had been an insured wage earner under the Act (Tr. 61). In 1970 appellee married a person who likewise suffered from cerebral palsy but who was not entitled to child's insurance or any other form of benefit under Title II of the Act (Tr. 36, 37). Because of this marriage, appellee's child's insurance benefits were terminated by the Secretary pursuant to Section 202(d)(1)(D) of the Act (Tr. 7; see Tr. 63).

After exhausting his administrative remedies, appellee instituted this action in the United States District Court for the Western District of Missouri to review the Secretary's termination of his benefits. On January 14, 1974, the district court held that Sections 202(d)(1)(D) and 202(d)(5) of the Act—the termination provision and the limited exception thereto—are unconstitutional "as applied to child's insurance beneficiaries who marry totally disabled persons who do not receive child's insurance benefits" (App. B, *infra*, p. 17a). The court reasoned that these statutory provisions violated the equal protec-

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(2) narrows the application of that rule to dependent children who are disabled.

tion principles that inhere in the Due Process Clause of the Fifth Amendment because there was "[n]o rational basis" for the statutorily created "distinction between beneficiaries who marry disabled persons who do receive benefits and beneficiaries who marry disabled persons who do not receive benefits" (App. B, *infra*, p. 13a). The court declared the statutory provisions unconstitutional and remanded the case to the Secretary "with the * * * direction that [appellee's] claim be allowed" (App. B, *infra*, p. 17a).

3. The Secretary appealed directly to this Court (No. 73-1758). The jurisdictional statement pointed out (pp. 7-8) that since January 1, 1974, appellee and his wife had been receiving a monthly benefit of $210 under the newly enacted program of Supplemental Security Income for the Aged, Blind, and Disabled, Title XVI of the Social Security Act, as added by the Social Security Amendments of 1972, 86 Stat. 1329, 42 U.S.C. (Supp. V) 1381 *et seq.*, and that that amount was only approximately $20 per month less than the combined amount appellee and his wife would have received under both the child's insurance and the supplemental security income provisions of the Act had appellee remained entitled to child's insurance benefits. The change in appellee's circumstances caused by the enactment of the supplemental security income program was not a part of the record before the district court when it had rendered its decision. On October 15, 1974, this Court vacated the judgment of the district court and remanded the

case for reconsideration in light of the new program. 419 U.S. 811-812.

On remand, the district court held that the supplemental security income program "simply had nothing to do with the questions presented" in this case (App. A, *infra*, p. 3a). The court therefore reinstated its original judgment of January 14, 1974, holding Sections 202(d)(1)(D) and 202(d)(5) unconstitutional as applied (App. A, *infra*, p. 4a).

THE QUESTION IS SUBSTANTIAL

This case presents an important question regarding the constitutional validity of the system chosen by Congress for allocating secondary benefits under the Social Security Act. Several other secondary insurance benefits, in addition to child's insurance benefits, require as a condition of eligibility that the beneficiary be unmarried (or an unremarried widow, widower, or divorcee);[3] generally speaking, those benefits are terminated when the beneficiary marries or remarries.[4] For each of these benefit categories, however, there is a limited exception in favor of beneficiaries who marry individuals who themselves are secondary beneficiaries under the Act.[5] Thus,

[3] See Sections 202(b)(1)(C) (divorced wives), 202(e)(1)(A) (widows), 202(f)(1)(A) (widowers), and 202(g)(1)(A) (surviving or divorced mothers).

[4] See Sections 202(b)(1)(H), 202(e)(1), 202(f)(1), and 202(g)(1). See also Section 202(h)(1)(C) (parents). But see Sections 202(e)(4) and 202(f)(5).

[5] In addition to the statutory provision involved in this case, Section 202(d)(5), see Sections 202(b)(3), 202(e)(3), 202(f)(4), 202(g)(3), and 202(h)(4).

this case involves a principle that has general applicability under the Social Security Act, even though the district court's opinion is directly concerned only with child's insurance benefits. Moreover, the holding that the exception to the general termination rule is unconstitutionally narrow reflects a misunderstanding of the rationale underlying the legislatively chosen method of allocating secondary benefits and rests upon a misapplication of the requirements of the Due Process Clause.

1. When the child's insurance provisions were first adopted, there was no exception to the general rule that benefits under those provisions terminate when the child marries. 53 Stat. 1364-1365. This general rule itself is rational. Child's benefits, like other forms of secondary insurance under the Act, were established "to afford more adequate protection to the family as a unit." H.R. Rep. No. 728, 76th Cong., 1st Sess. 7 (1939). See also *Mathews* v. *de Castro*, No. 75-1197, decided December 13, 1976 (slip op. 5). Benefits were provided to the wage-earner's dependent children as a means of replacing the support lost by those children as a consequence of the wage-earner's death, disability, or retirement. See *Mathews* v. *Lucas*, No. 75-88, decided June 29, 1976 (slip op. 12).[6]

[6] The provision of benefits on the basis of the wage-earner's social security account also was viewed as helping to preserve the wage-earner's role as a provider and to sustain the child's sense of security in the family as a unit. Hearings on the Social Security Amendments of 1939 before the House Committee on Ways and Means, 76th Cong., 1st Sess. 32-33 (1939).

Normally, upon marrying a child departs from "the family as a unit" and establishes a new family. As a general matter, married children are considerably less likely than unmarried ones to be dependent on their parents for the provision of their essential economic needs and are therefore correspondingly less likely to be significantly affected, in terms of support, by the continuing fact of the wage-earner's death, disability, or retirement. In short, in ordinary circumstances marriage significantly reduces or terminates the special need for support. Congress reasonably determined that a child who marries removes himself from the class of individuals for whom secondary benefits were designed, and it therefore provided that children lose their entitlement to child's insurance benefits at the time of marriage. Section 202(d)(1)(D) of the Act.[7]

In holding this statutory provision unconstitutional as applied in the circumstances here, the district court in essence disapproved of Congress' extrapolation from a general observation of human experience—that marriage normally results in the establishment of a new, self-sufficient household—to a broad bar on the payment of benefits to most married children of the wage-earner. The court's analysis rests upon the fact that some beneficiaries, themselves incapable of gainful employment, may

[7] For the same reasons, Congress provided that a child of a deceased, disabled, or retired wage-earner is eligible to receive child's insurance benefits only if he is unmarried at the time his application for benefits is filed. Section 202(d)(1)(B).

"marr[y] * * * person[s] who can not provide a source of support" (App. B, *infra*, p. 14a) and that such individuals would in fact remain dependent upon the wage-earner, or the secondary benefits payable on his account, for support. Yet a holding of unconstitutionality based upon that particularized concern contravenes the principle, which the court recognized but did not apply, "that a classification may not properly be held to violate equal protection principles because it 'is not made with mathematical nicety or because in practice it results in some inequality' " (App. B, *infra*, pp. 12a-13a).

The district court's approach would require Congress to abandon the use of broad, experientially based assumptions in the Social Security Act, in favor of an individualized means test for determining continued eligibility for secondary benefits. But such a result is not required by the Due Process Clause. Congress may constitutionally allocate secondary social security benefits on the basis of an individual's membership in the primary beneficiary's family unit, and may deny or terminate benefits when the individual separates from that unit. See *Mathews* v. *de Castro*, *supra*. Furthermore, Congress need not require a case-by-case determination of actual dependency upon the wage-earner, but may allocate benefits on the basis of the relative likelihood of dependency. *Mathews* v. *Lucas*, *supra*.

That is what Congress has done in the case of child's insurance benefits. Congress has determined that it is sufficiently probable that marriage termi-

nates the relationship of dependency to warrant termination of benefits upon marriage.[8] Such general, categorical assumptions about dependency and need conduce to the efficient administration of the program, and they afford a constitutionally permissible basis upon which to allocate secondary social security benefits. The assumption that married individuals are not dependent upon their parents for essential economic support, "though [it] may approximate, rather than precisely mirror, the results that case-by-case adjudication would show, [is] permissible under the Fifth Amendment * * *." *Mathews* v. *Lucas*, *supra* (slip op. 13-14). See also *Weinberger* v. *Salfi*, 422 U.S. 749.

2. In Section 202(d)(5) of the Act, Congress has provided, for disabled children (see note 2, *supra*), a limited exception to the general rule that marriage causes a termination of child's benefits. That exception is part of a series of amendments to the Act in 1958 in which Congress provided for the continuation of certain secondary benefits when the beneficiary marries an individual who also is entitled to secondary benefits, 72 Stat. 1030 (see p. 6 and n. 5, *supra*). The purpose of these amendments is explained in the legislative history (H.R. Rep. No. 2288, 85th Cong., 2d Sess. 18 (1958)):

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[8] Congress made a similar determination with respect to age: benefits terminate when the child reaches age 18 (or in the case of a student, age 22), except for disabled children, who "are as dependent on their parents after attaining age 18 as before * * *." S. Rep. No. 2133, 84th Cong., 2d Sess. 2 (1956).

> When a secondary beneficiary marries, such person's benefit is terminated under present law. * * * [I]f the new spouse is also receiving a secondary benefit, the benefits of both are terminated and ordinarily neither beneficiary can become entitled to any new benefits. Your committee's bill would eliminate the hardship in these cases by providing that marriage would not terminate a benefit where a person receiving mother's, widow's, widower's, parent's or childhood disability benefits marries a person receiving any of these benefits * * *.[9]

This explanation confirms what is apparent from the statutory language: in enacting a limited exception to the general marriage bar, Congress was specifically and exclusively concerned with the consequences under the Act of a marriage between two social security insurance beneficiaries. Congress reasonably determined that a marriage between individuals both receiving insurance benefits under the Act would not ordinarily result in the elimination or reduction of the probable need of such individuals. Congress therefore amended the Act to prevent the substantial reduction in, or termination of, benefits of families that could be presumed to be exclusively dependent upon primary or secondary social security insurance benefits for support.

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[9] In addition, Congress provided for the continuation of child's benefits when the disabled beneficiary marries a person receiving old-age or disability benefits. See Section 202(d)(5). See also Section 202(g)(3) (mother's benefits).

The rationale of those amendments does not extend to appellee's case. Since appellee did not marry another social security insurance beneficiary, his new family was not presumptively exclusively dependent upon primary or secondary insurance benefits for support.

The district court ruled, however, that because appellee married another disabled individual, who in fact was unable to support him, appellee's need continued and therefore, as a constitutional matter, his benefits also must continue. But there was a sound basis for Congress' decision to limit the exception to the marriage bar to marriages between social security insurance beneficiaries. The marriage between such beneficiaries presents a unique and readily identifiable situation that Congress could easily treat within the Act's existing benefit structure.

Other marriages present a substantially different problem. Within the narrow frame of reference provided by the social security insurance benefit program, there is no way to identify in which of those marriages the beneficiary's need for support continues. If Congress sought to meet specific instances of continued need, it would be forced to proceed in either of two ways.

It could utilize broad presumptions, such as the presumption that a beneficiary's marriage to a welfare recipient affords no occasion for a termination of benefits. But such an approach would entail a far more detailed inquiry into continuing, month-by-

month eligibility than is now necessary under the insurance benefits program. Moreover, although in our view presumptions are constitutionally permissible, they necessarily are only approximations and therefore would fail to satisfy the district court's apparent requirement that benefits not be "denied to a beneficiary who marries a person who can not provide a source of support to the beneficiary" (App. B, *infra*, pp. 13a-14a).

Alternatively, Congress could abandon the current method of allocating benefits on the basis of broad and easily applied presumptions, in favor of an individualized means test similar to that used for the allocation of welfare benefits. Such a change would work a drastic alteration in the fundamental character of Title II, for until now those provisions have "not purport[ed] to be general public assistance laws that simply pay money to those who need it most." *Mathews* v. *de Castro, supra* (slip op. 5). The decisions of this Court make plain that no such alteration in Title II is constitutionally required. See, *e.g.*, *Mathews* v. *de Castro, supra; Mathews* v. *Lucas, supra; Weinberger* v. *Salfi, supra.*

3. Congress has enacted a supplemental security income program, Title XVI of the Social Security Act, 42 U.S.C. (Supp. V) 1381 *et seq.*, under which appellee and his spouse have been receiving benefits each month since the program became effective in January 1974 (Stip. pars. 3, 6).[10] On remand, the

[10] "Stip." refers to the stipulation of facts on remand.

district court held that the supplemental security income program "simply ha[s] nothing to do with the questions presented" (App. A, *infra*, p. 3a). We believe that the provisions challenged here may be sustained as constitutional without reference to the existence of the supplemental security income program. But, contrary to the district court's holding, Title XVI does bear upon the issues presented here, for it underscores the reasonableness of the allocation of secondary social security benefits.[11]

Benefits under Title XVI are provided to aged, blind, and disabled individuals whose income and other resources are below statutorily prescribed levels. Section 1611, as added by the Social Security Amendments of 1972, 86 Stat. 1466-1468, 42 U.S.C. (Supp. V) 1382. Unlike the secondary benefits provisions of Title II, Title XVI is designed to allocate assistance on the basis of individualized determinations of need. Under this program, appellee and his wife receive only marginally less in federal assistance than they would have received had appellee's secondary child's benefits been continued (see p. 5, *supra*; Stip. pars. 3, 6, 13, 15). Congress has thus responded to and provided for the needs of appellee and other similarly situated individuals in a reasonable manner.

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[11] It also further demonstrates that in this area of social welfare, Congress has acted in the time honored tradition of legislative reform by moving one step at a time to address "the phase of the problem which seems most acute to the legislative mind." *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

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DECEMBER 1976.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

No. 20495-1

JOHN A. JOBST, PLAINTIFF,

vs.

DAVID MATHEWS, Secretary of Health, Education and Welfare, DEFENDANT

MEMORANDUM AND ORDER

The Supreme Court vacated the judgment of this Court, entered for reasons stated in *Jobst* v. *Richardson*, (W.D. Mo. 1974) 368 F. Supp. 909, and remanded this case "for reconsideration in light of 42 U.S.C. (Supp. II 1972) 1381, *et seq.* (86 Stat. 1329; Pub. L. No. 92-603 (Oct. 30, 1972)." Counsel for the plaintiff thereafter requested that this Court receive and consider evidence to be adduced by the parties prior to consideration of the effect of 42 U.S.C. §§ 1381, *et seq.*, on Mr. Jobst's claim for Child's Disability Benefits. After submission and answer of interrogatories, the parties entered into a stipulation of factual data and agreed that such data should be considered by this Court on remand.

The case was thereafter fully briefed by both sides. We have considered the undisputed factual circumstances and the briefs of the parties. We find and

conclude that the judgment originally entered should be and will be reinstated.

Although the Supplemental Security Income program was enacted by 42 U.S.C. § 1381, *et seq.*, on October 30, 1972, to become effective January 1, 1974, the Secretary apparently did not consider that that new legislation would have any impact upon the questions presented to this Court at the time the case was first here. Such question was never presented to this Court and was apparently raised for the first time in the Jurisdictional Statement filed in the Supreme Court in connection with the motion to dismiss or affirm.

The Secretary's brief on remand argues that "the recent enactment of additional remedial legislation in the form of Title XVI of the Act (SSI) must . . . be considered in analyzing the alleged discrimination contained in Section 202(d)(5) for this latest legislation by providing substantially equal cash benefits to individuals in plaintiff's situation modulates even the alleged discrimination of Section 202(d)(5)."

The first twenty pages of defendant's brief on remand, however, is basically a reiteration of arguments which we rejected when the case was first presented. On remand, it is argued in regard to the narrow question presented by the Supreme Court's order that "an equal protection analysis of the challenged sections must consider the inter-relationship of the challenged sections and evolution of the statu-

tory scheme which has now been capped by Title XVI."

We have carefully examined the briefs of the parties and studied the legislative history, such as it is, in connection with all the various sections of the United States Code involved in this case. We find and conclude that the enactment of the Supplemental Security Income program, 42 U.S.C. §§ 1381, *et seq.*, does not relate to the purposes supporting the Congressional enactment of the Child's Insurance Benefits Program, as originally enacted in 42 U.S.C. § 402(d). It is true, of course, that the accidental application of SSI payments improved plaintiff's payments to some degree. But under the judgment originally entered in this case, plaintiff would have a claim of back benefits in an amount of $9,215.80. We recognize that the Secretary maintains that this amount should be reduced by at least $3,314.20. We do not, at this time, get into the question of specific amounts.

We simply find and conclude that all action taken by the Secretary in this case was taken before the effective date of the Supplemental Security Income legislation and that, as was the Secretary's position before this Court at all times until remand, 42 U.S.C. §§ 1381, *et seq.*, simply had nothing to do with the questions presented.

We entertain the same view that the Court of Appeals for the Sixth Circuit entertained in *Fletcher* v. *Hous. Auth. of Louisville*, (6th Cir. 1975) 525

F. 2d 532, when, upon reconsideration of a case remanded the same day as was this case for further consideration in light of an amendment to the National Housing Act of 1937, that court concluded in *Fletcher* that the 1974 amendments to the National Housing Act did not shed any light on the old Act which would require a reversal of its earlier decision. That court, as does this Court, remains convinced that its prior holding was based on a correct interpretation of the legislation under actual consideration and that its original judgment should be reinstated.

Accordingly, and for the reasons stated, it is

ORDERED that the judgment originally entered in this case should be and the same is hereby reinstated.

/s/ John W. Oliver
District Judge

Kansas City, Missouri

July 27, 1976

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

No. 20495-1

JOHN A. JOBST, PLAINTIFF

v.

ELLIOT L. RICHARDSON, SECRETARY OF DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, DEFENDANT

MEMORANDUM AND ORDER

I

This case involves a challenge to a provision of the Social Security Act, 42 U.S.C. § 402(d), which, in effect, provides for child's insurance benefits for a child who marries a person who is eligible for Social Security benefits but discontinues child's insurance benefits for a child who marries a person who is ineligible to receive Social Security benefits.

Plaintiff contends that that provision, which forced the termination of his child's insurance benefits, is unconstitutional in that it denies him equal protection of the laws in violation of the Due Process clause of the Fifth Amendment. He prays for reinstatement of his child's insurance benefits, invoking the Court's jurisdiction under 42 U.S.C. § 405(g); a judgment declaring 42 U.S.C. § 402(d)(1)(D) unconstitutional; and a permanent injunction restraining defendant from enforcing 42 U.S.C. § 402(d)

(1)(D). We find and conclude that plaintiff is entitled to relief for reasons we shall state in detail.

II

On November 28, 1956, John A. Jobst, pursuant to 42 U.S.C. § 402(d), filed an application for child's insurance benefits based on the earnings record of his father. The Social Security Administration found that plaintiff had been disabled since birth because of cerebral palsy and awarded him benefits to commence January, 1957 (Tr. 61). In October, 1970, plaintiff advised the Social Security Administration that he had married Sandra Lee, who also has cerebral palsy and is permanently and totally disabled. (Tr. 36). Sandra Lee receives assistance from the Division of Welfare of the State of Missouri but does not receive Social Security Benefits (Tr. 36, 37).

On November 11, 1970, plaintiff was advised that his benefits would be terminated as of October, 1970, because of his marriage (Tr. 63). That termination was based upon the provisions of 42 U.S.C. §§ 402(d)(1) and (5), which provide for the termination of benefits to a disabled child beneficiary upon the beneficiary's marriage unless the beneficiary's spouse is also entitled to Social Security benefits.

Plaintiff requested a hearing, which was held in Kansas City, Missouri, on September 7, 1971 (Tr. 32, 33-45). The hearing examiner reversed the initial termination by the Administration and reinstated plaintiff's benefits for the following reason:

> Termination on the basis of marriage is arbitrary and without any rational basis, and therefore, violates the equal protection and due process clauses of the Constitution. Therefore, the claimant is entitled to continue drawing child's insurance benefits (disability). (Tr. 27).

The Appeals Council reviewed the hearing examiner's decision on its own motion. On June 22, 1972, the Council reversed the hearing examiner's ruling, concluding that a "quasi-judicial federal administrative agency" has no authority to consider the Constitution of the United States when it administers the Social Security Act. (Tr. 7). The Appeals Council further determined that it would not ask for recovery of the cover payments resulting from the hearing examiner's decision.

On August 18, 1972, plaintiff filed this action. The case was initially complicated by plaintiff's insistence that this case was one in which a three-judge court must be convened pursuant to 28 U.S.C. §§ 2242 and 2284. On May 11, 1973, we entered our memorandum and order denying plaintiff's application for the convening of a three-judge court. The case now pends on cross-motions for summary judgment.

We find and conclude that 42 U.S.C. § 402(d)(1)(D) as modified by 42 U.S.C. § 402(d)(5) and as applied by the Secretary to plaintiff is unconstitutional and that, therefore, the decision of the Appeals Council must be reversed.

III

The statutory scheme relevant to the question presented provides in material part:

Title 42, Section 402, United States Code:

> (d)(1) Every child (as defined in section 416 (e) of this title) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child—
>
> (A) has filed application for child's insurance benefits,
>
> (B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time student and had not attained the age of 22, or (ii) is under a disability (as defined in section 423(d) of this title) which began before he attained the age of 22, and
>
> (C) was dependent upon such individual—
>
> (i) if such individual is living, at the time such application was filed,
>
> (ii) if such individual has died, at the time of such death, or
>
> (iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,
>
> shall be entitled to a child's insurance benefit for each month, beginning with the first month

> after August, 1950 in which such child becomes so entitled to such insurance benefits and ending with the month preceding whichever of the following first occurs—
>
> (D) the month in which such child dies or marries.
>
> * * * * *
>
> (5) In the case of a child who has attained the age of eighteen and who marries—
>
> (A) an individual entitled to benefits under subsection (a), (b), (c), (f), (g), or (h) of this section or under section 423(a) of this title, or
>
> (B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection,
>
> such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) . . . not be terminated by reason of such marriage; . . . .

The question presented is whether the Social Security Act's different treatment of various classes of child's insurance beneficiaries who marry violates the standards of the equal protection of the law embodied in the Due Process Clause of the Fifth Amendment. Other issues raised by the defendant in its brief, apparently in defense of what it thought would be argued by plaintiff, have not been raised by plaintiff and, therefore, there is no need to discuss them further.

It is indisputable that while the Fifth Amendment contains no specific equal protection clause, equal

protection standards have been found to be present in the due process clause of the Fifth Amendment if the federal statute manifested a "patently arbitrary classification, utterly lacking in rational justification." *Flemming* v. *Nestor*, 363 U.S. 603, 611 (1960); *Bolling* v. *Sharpe*, 347 U.S. 497 (1954).

It is equally clear that the Social Security Act is subject to scrutiny under standards of equal protection. The United States Supreme Court in *Richardson* v. *Belcher*, 404 U.S. 78 (1971), citing with approval its earlier decision in *Flemming* v. *Nestor*, *supra*, stated:

> We have held that "[t]he interest of a covered employee under the [Social Security] Act is of sufficient substance to fall within the protection from arbitrary governmental action afforded by the Due Process Clause." [404 U.S. at 81].

Plaintiff argues that a strict equal protection standard should be applied in this case. He urges that the right to marry the person of one's choice is a fundamental right, citing *Loving* v. *Virginia*, 388 U.S. 1 (1969); and *Meyer* v. *Nebraska*, 262 U.S. 390 (1923). He then relies upon *Shapiro* v. *Thompson*, 394 U.S. 618, 634 (1969), for the proposition that "any classification which serves to penalize the exercise of a constitutional right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional."

We maintain serious doubt whether plaintiff's strict standard argument may be said to be tenable

in light of *Dandridge* v. *Williams*, 397 U.S. 471 (1970), and *San Antonio Independent School District* v. *Rodriquez*, 411 U.S. 1 (1972). Plaintiff attempts to build upon language in *Loving* and *Meyer*, which attests to the importance of marriage, to create a new constitutional right. In *Rodriquez*, however, the Supreme Court stated:

> It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. [411 U.S. at 33].

We need not reach the strict standard question, however, for we find and conclude that the classification in question is not "rationally based and free from invidious discrimination" [*Dandridge* v. *Williams*, 397 U.S. at 487].

Defendant, at page 2 of its Supplemental Memorandum of Law, cites what it argues was the motive of Congress in drawing the classification of 42 U.S.C. § 402(d)(1)(D) and § 402(d)(5):

> The general rule providing that a married child applicant does not qualify for benefits and that a subsequent marriage will terminate entitlement is based on the general proposition that a married individual becomes the dependent of a spouse able to provide support. *Herzberg* v. *Finch*, 321 F. Supp. 1367 (S.D. N.Y. 1971). Accordingly, such beneficiary had no need of the benefits previously received; thus, such benefits could be terminated. It is submitted that there is a rational basis for Congress to make an ex-

ception to this rule in the case of a beneficiary receiving benefits on the wage record of another individual at the time of marriage who marries another beneficiary who is also receiving benefits on the wage record of another individual at the time of marriage, because it is unlikely that either of these beneficiaries would have any source of support other than their benefits. Thus Congress could assume—and it would be consistent with the Act—that those beneficiaries would not have a new source of support and would have need of their benefits, and could rationally make an exception to the rule in their case.

No Congressional history of the section of the Act in question is cited by either party, but assuming that this statement of Congressional intent is correct we may accept defendant's argument that such a purpose could be said to constitute a rational basis for the decision of Congress to discontinue benefits to those child's insurance beneficiaries who marry individuals who are able to provide a source of support to the beneficiary other than his benefits.

To say that Congress could have enacted a constitutionally valid statute is not to say that it did so. We find and conclude that Congress did not draw 42 U.S.C. § 402(d)(1)(D) and § 402(d)(5) in a manner so that the result of the application of those provisions in this case is consistent with what may have been an effort to establish a rational classification. We recognize, of course, that a classification may not properly be held to violate equal protection principles

because it "is not made with mathematical nicety or because in practice it results in some inequality." (*Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911)), or "because [it] may be unwise, improvident, or out of harmony with a particular school of thought" (*Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 488 (1955)). We must recognize, however, that legislation must be drawn so that the distinctions made have "some relevance to the purpose for which the classification is made." *Baxstrom* v. *Herold*, 383 U.S. 107, 111 (1966).

The statute in question provides for the termination of the benefits of all child's insurance beneficiaries who marry persons who do not likewise receive child's benefits, regardless of whether they have a source of support other than their benefits. The obvious effect of the statute is to create a distinction between beneficiaries who marry disabled persons who do receive benefits and beneficiaries who marry disabled persons who do not receive benefits. The benefits of the former class of beneficiaries must be terminated, those of the latter class may not.

No rational basis for such a distinction has been suggested nor, we conclude, does one exist. The distinction between the two classes of beneficiaries has absolutely no relevance to the purpose for which the general classifications in the statute were drawn. Indeed, the statutory distinctions are antithectical to that purpose; they result in situations similar to the one here, in which benefits are denied to a beneficiary

who marries a person who can not provide a source of support to the beneficiary.

IV

The Secretary attempts to sustain the constitutionality of the statute as applied in this case by arguing that the principal classification intended by Congress—between beneficiaries who marry persons who are entitled to benefits and those who marry persons not entitled to benefits—which is intended to provide benefits only to those who marry persons not able to provide support, is not arbitrary and that, therefore, an unusual application of the statute, which results in an obviously unintended and unfair result, does not render it unconstitutional. Defendant ignores the fact, however, that the statutory language creates a distinction other than the one which is based upon a rational basis; that is, beneficiaries who marry disabled persons who do receive child's benefits and beneficiaries who marry disabled persons who do not receive child's benefits.

In *Stanley* v. *Secretary of Health, Education and Welfare*, 356 F. Supp. 793 (W.D. Mo. 1973), the statute involved provided for child's insurance benefits for children who are adopted after a parent becomes entitled to old-age benefits if the child is a natural child or stepchild, but not if the child bears no such relationship to the parent unless the following requirements are met: (1) the child was legally adopted before the end of the twenty-fourth month

following the month in which the parent became entitled to old-age benefits; (2) the child had been receiving at least one-half of his support from the parent for the year before the parent filed application for insurance benefits; and (3) the adoption proceedings were started in the month or before the month that the parent filed application for old-age benefits or the child was living with the parent in that month. Chief Judge Becker recognized that the distinction was drawn "with the purpose of preventing abuse of the Social Security Act by people who would otherwise adopt children solely to qualify them for benefits" [356 F. Supp. at 802].

In this case, however, the adopted parent was the child's grandfather in whose care the child had been placed by the natural parents. The child was not the natural child or stepchild of the adopted parent though, and he did not meet the alternative requirements for benefits. Judge Becker concluded that the statute, as applied in that case, violated equal protection principles:

> In the case at bar there is no permissible rational distinction between a natural son who may be illegitimate and a stepson who may not even be a blood relation on one hand and an adopted grandchild on the other hand. This is an arbitrary classification inconsistent with the purpose of the Social Security Act and a violation of the equal protection standards of the due process clause of the Fifth Amendment [346 F. Supp. at 805].

In *Stanley*, as in this case, there may have been a rational basis for the distinction created on the face of the statute. The statute operated, however, to create another distinction which was arbitrary and unrelated to the purpose of the statute.

The cases cited by defendant in support of his position that the statute in question is constitutional do not stand for that proposition. Neither *Herzberg* v. *Finch*, 321 F. Supp. 1367 (S.D. N.Y. 1971 nor *Judkins* v. *Richardson*, Civil No. 72-62 (D. Ore. 1972), dealt with the question of the constitutionality of § 402(d)(1)(D) and § 402(d)(5). In both cases the courts were asked to effectuate the intent of Congress and interpret the statute to permit continuation of child's insurance benefits to persons in the position of plaintiff in this case. In both cases the court refused to interpret the plain language of the statute, but they did not pass on the constitutionality of the statute as applied in those cases and this case. The question apparently was neither presented nor argued; certainly it was not ruled.

We therefore find and conclude that 42 U.S.C. § 402(d)(1)(D) and § 402(d)(5) are violative of principles of equal protection as incorporated in the Fifth Amendment to the Constitution as applied to a beneficiary who marries a totally disabled person who does not likewise receive child's insurance benefits.

For the reasons stated, it is

Ordered (1) that 42 U.S.C. § 402(d)(1)(D) and § 402(d)(5) as applied to child's insurance benficiaries who marry totally disabled persons who do not receive child's insurance benefits are hereby declared unconstitutional. It is further

Ordered (2) that the motion of the defendant Secretary of Health, Education and Welfare for summary judgment should be and the same is hereby denied. It is further

Ordered (3) that the decision of the Secretary should be and the same is hereby reversed. It is further

Ordered (4) that plaintiff's motion for summary judgment should be and the same is hereby granted and that this case should be and the same is hereby remanded for the sole purpose and with the express direction that plaintiff's claim be allowed.

JOHN W. OLIVER,
District Judge.

KANSAS CITY, MO., *January 14, 1974.*

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

[Filed August 24, 1976]

Civil No. 20495-1

JOHN A. JOBST, PLAINTIFF

v.

F. DAVID MATHEWS, Secretary of Department of Health, Education & Welfare, DEFENDANT

NOTICE OF APPEAL

Notice is hereby given that the defendant hereby appeals to the Supreme Court of the United States, pursuant to 28 U.S.C. §§ 1252 and 2101 from the judgment of a single judge of the District Court entered in this action on July 27, 1976.

Dated at Kansas City, Missouri, this 24th day of August, 1976.

BERT C. HURN
United States Attorney

By /s/ J. Whitfield Moody
J. WHITFIELD MOODY
First Assistant
United States Attorney
(Member of the Bar of the United States Supreme Court)

OF COUNSEL

Tom Stout
Office of
General Counsel
Social Security
Administration

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was mailed this 24th day of August, 1976, to:

J. D. Riffel
Litigation Unit
Legal Aid and Defender Society
of Greater Kansas City
1029 Oak Street
Kansas City, Missouri 64106

/s/ J. Whitfield Moody
J. WHITFIELD MOODY
First Assistant
United States Attorney

APPENDIX D

Section 202 of the Social Security Act, 49 Stat. 623, as amended, 42 U.S.C. (and Supp. V) 402 provides in pertinent part:

(d) (1) Every child (as defined in section 416 (e) of this title) of an individual entitled to old-age or disability insurance benefits or of an individual who dies a fully or currently insured individual, if such child—

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time student and had not attained the age of 22, or (ii) is under a disability (as defined in section 423(d) of this title) which began before he attained the age of 22, and

(C) was dependent upon such individual—

(i) if such individual is living, at the time such application was filed,

(ii) if such individual has died, at the time of such death, or

(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and end-

ing with the month preceding whichever of the following first occurs—

(D) the month in which such child dies or marries,

* * * * *

(5) In the case of a child who has attained the age of eighteen and who marries—

(A) an individual entitled to benefits under subsection (a), (b), (e), (f), (g), or (h) of this section or under section 423(a) of this title, or

(B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection,

such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage; * * *

* * * * *

(s)(2) * * * [S]o much of subsection[ ] * * * (d)(5) * * * of this section as precedes the semicolon, shall not apply in the case of any child unless such child, at the time of the marriage referred to therein, was under a disability * * *.

APPENDIX E

JUDGMENT ON DECISION BY THE COURT CIV 32 (7-63)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

Civil Action File No. 20495-1

JOHN A. JOBST, PLAINTIFF

vs.

DAVID MATHEWS, Secretary of Health, Education and Welfare, DEFENDANT

JUDGMENT

This action came on for determination before the Court, Honorable John W. Oliver, United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered,

It is Ordered and Adjudged that the judgment originally entered in this case should be and the same is hereby reinstated.

Dated at Kansas City, Missouri, this 27th day of July, 1976.

/s/ [Illegible]
Clerk of Court

Attest: A true copy
R. F. CONNOR, Clerk
U.S. District Court
Western District of Missouri

by /s/ [Illegible]
Deputy

☆ U. S. GOVERNMENT PRINTING OFFICE: 1976 225196 31

Supreme Court, U. S.
FILED
APR 8 1977
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-860

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION AND WELFARE,
Appellant,

—*v.*—

JOHN A. JOBST.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

JURISDICTIONAL STATEMENT FILED DECEMBER 22, 1976
PROBABLE JURISDICTION NOTED FEBRUARY 22, 1977

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-860

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION AND WELFARE,
Appellant,

—v.—

JOHN A. JOBST.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

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The memoranda and orders of the district court, dated January 15, 1974, and July 27, 1976, the judgment of the district court, dated July 27, 1976, and the notice of appeal to the Supreme Court, dated August 24, 1976, are contained in the appendices to the jurisdictional statement (J.S. App. A-C, E)

RELEVANT DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
1972	
Aug. 18	Complaint—filed. Writ & 3 copies issued for U.S. Marshal.
Aug. 21	USM-285 bearing return of U. S. Marshal showing service on U. S. Justice Dept, and USAtty. for the Western District of Missouri, date of 8/17/1972—Filed.
Oct. 3	Answer, along with a certified copy of the transcript of the record—filed. Submitted.
Nov. 5	Memorandum and Order—filed (ORDERED that plaintiff show cause in writing within (10) days why a three-judge court should be convened to hear and determine this case; and ORDERED that defendant file an appropriate response within (5) days thereafter). Copies mailed to counsel.
Nov. 13	Motion with supporting memorandum for summary judgment—Filed by defendant.
Nov. 17	Suggestions in support of plaintiff's request for a three-judge court and remarks in regard to the propriety of processing plaintiff's action by cross motions for summary judgment—Filed.
Nov. 21	Application for an enlargement of time, FOLLOWING THE COURT'S RULING ON THE PROPRIETY OF A THREE-JUDGE COURT, in which plaintiff may file suggestions in opposition to motion of defendant for summary judgment filed November 13, 1972—Filed (not opposition from defendant). Submitted.
Nov. 22	Motion for amendment to defendant's memorandum in support of defendant's motion for summary judgment—Filed. Submitted.
	Defendant's suggestions in opposition to plaintiff's request for a three-judge court—Filed. Submitted.

DATE	FILINGS—PROCEEDINGS

1972

Nov. 27 Memorandum and Order—Filed. (Plaintiff's motion to extend time (see application of 11/21/72) is hereby denied. Time is extended to a total of 20 days within which plaintiff may file opposition to defendant's motion for summary judgment. JWO) Copies to counsel.

Nov. 28 Application for extension of time to December 9, 1972 within which plaintiff may file response to motion for summary judgment—Filed (counsel submitted copy of application and form of order directly to the Court).

Dec. 4 Motion with supporting suggestions for leave to file amended complaint—Filed. by plaintiff.

Dec. 7 Plaintiff's suggestions in reply to defendant's suggestions in opposition to plaintiff's request for a three-judge court—Filed.

Dec. 13 Motion to request leave to file defendant's supplemental memorandum of law—Filed. Submitted.

Defendant's supplemental memorandum of law—Filed.

Dec. 15 Suggestions in opposition to defendant's motion for summary judgment—Filed by plaintiff. Submitted.

1973

Jan. 22 Defendant's Reply brief to plaintiff's brief in opposition to motion for summary judgment—Filed. Submitted.

May 11 Memorandum and Order—Filed. (IT IS ORDERED: Plaintiff's application for convening three-judge court is hereby denied; plaintiff may file a cross-motion for summary judgment within ten (10) days if he so wishes; parties are to indicate within ten (10) days if additional briefs are necessary; plaintiff's motion to file his first amended complaint is hereby denied—plaintiff may make any amendments he deems necessary by interlineation. JWO) Copies to counsel.

DATE	FILINGS—PROCEEDINGS

1973

May 18 Motion for Summary Judgment (adopting suggestions used in opposition to defendant's motion for summary judgment)—Filed by plaintiff. Submitted.

1974

Jan. 15 Memorandum and Order—Filed. (IT IS ORDERED that 42 USC, Secs. 402(d)(1)(D) & 402(d)(5) as applied to child's insurance beneficiaries who marry totally disabled persons who DO NOT receive child's insurance benefits are hereby declared UNCONSTITUTIONAL; Motion of Respondent for summary judgment is hereby *denied*; that the decisions of the Secretary is hereby *reversed*; and that plaintiff's motion for summary judgment is hereby granted and this case is hereby remanded for the sole purpose and express direction that plaintiff's claim be allowed. JWO) Copies to counsel.

Jan. 15 Cost statement mailed.

Feb. 8 Notice of Appeal—filed. Copies to counsel.
Affidavit of Service—filed.

Feb. 11 Bill of Costs ($23.00)—filed.

Nov. 15 Judgment from the Supreme Court (certified copy)—filed. [On consideration Whereof, it is ordered that the judgment of said United States District Court in this cause be, and the same is hereby, vacated; and that this cause be, and the same is hereby, remanded to the United States District Court for the Western District of Missouri for reconsideration in light of 42 U.S.C. (Supp. II, 1972) 1381 et seq. (86 Stat. 1329; Pub. L. No. 92-603 (Oct. 30, 1972.)

1975

Feb. 5 Plaintiff's first interrogatories to defendant—Filed.

Mar. 7 Defendant's motion with supporting suggestions for extension of time to response to plaintiff's first interrogatories, plaintiff agreeing—Filed. Submitted.

DATE	FILINGS—PROCEEDINGS

1975

Mar. 7 Order granting defendant time extension through April 7, 1975 for filing of response to plaintiff's first interrogatories—Filed. Copies served.

Apr. 8 Defendant's motion for enlargement of time to answer certain interrogatories with suggestions in support—filed and submitted.

Apr. 7 Defendant's answer to plaintiff's first interrogatories —filed.

Apr. 14 Order granting defendant extension of time through April 17, 1975 to answer plaintiff's first interrogatories (enumerated herein)—Filed. Copies to counsel.

Apr. 17 Defendant's answers to plaintiff's first interrogatories—Filed.

1976

Mar. 31 Defendant's brief on remand—Filed.

Apr. 2 Stipulation of Facts—Filed.

May 3 Plaintiff's Memorandum of Law on Remand—Filed & submitted.

Jul. 27 MEMORANDUM—And Order, filed. (That the judgment originally entered in this case should be and is hereby reinstated) Copies to counsel.

Jul. 27 JUDGMENT—On Decision by the Court (RFC), filed.

Aug. 24 Notice of Appeal (to the Supreme Court) filed by USA.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Civil Action No. 20495-1

[Filed Aug. 18, 1972]

JOHN A. JOBST, PLAINTIFF

vs.

ELLIOT C. RICHARDSON, SECRETARY OF
HEALTH, EDUCATION, AND WELFARE, DEFENDANT

COMPLAINT

Preliminary Statement

This is a civil action brought by the plaintiff in his own behalf seeking a declaratory judgment and injunctive relief declaring unconstitutional Title 42 U.S.C Section 402 (d) (1) (D) (Section 202(d) (5) of the Social Security Act as amended), which deprives plaintiff of his right to marry anyone he so chooses without having his child's insurance benefits (disability) terminated in violation of the due process clause of the Fifth Amendment to the United States Constitution.

Jurisdiction

1. The jurisdiction of this court is invoked pursuant to Title 42 U.S.C. Section 405(g) to review a final decision or decisions of the defendant.

2. Plaintiff's action for declaratory relief is sought pursuant to Title 28 U.S.C. Section 2201-2202 and Rule 57 of the Federal Rules of Civil Procedure, all of which relate to declaratory judgment.

3. A three-judge court is requested to hear and determine the challenge to the constitutionality of Title 42 U.S.C. Section 402(d) (1) (D) (Section 202(d) (5) of the

Social Security Act as amended), pursuant to Title 28 U.S.C. Section 2282 and 2284.

Parties

4. The plaintiff is an adult citizen of the County of Jackson, City of Independence, State of Missouri, residing at 1315 Ralston.

5. The defendant is the Secretary of Health, Education, and Welfare of the United States, and at all times heretofore and hereinafter mentioned was in exercise of his duties as such.

Facts

6. The wage earner, John L. Jobst, died on March 19, 1956. Beatrice M. Jobst, wife of the deceased wage earner, filed an application for child's insurance benefits (disability) in October, 1956, for John Arlen Jobst, born July 18, 1932. It was then determined that said child, John Arlen Jobst, was disabled prior to the attainment of age 18 and was entitled to child's insurance benefits (disability) beginning January, 1957 under Section 202 (d) of the Social Security Act.

7. In October, 1970, plaintiff advised the Social Security Administration that he was married on October 2, 1970, to Sandra Lee. Sandra Lee is a cerebral palsy victim, who although disabled, is not eligible to receive Social Security benefits. By notice dated November 11, 1970, the Social Security Administration advised plaintiff that he was not entitled to benefits for the month of October, 1970 since he had married, and because of his marriage, his childhood benefits were terminated effective October, 1970.

8. On February 11, 1971, plaintiff requested reconsideration of the determination of the Social Security Administration; on March 1, 1971, the Social Security Administration affirmed the initial determination.

9. On April 7, 1971, plaintiff filed a request for a hearing before a Hearing Examiner; such hearing was held on September 7, 1971, which resulted in a decision dated January 11, 1972, for John A. Jobst, the plaintiff in this action, a copy of which decision is attached hereto

as Plaintiff's Exhibit No. 1 and incorporated by reference.

10. Plaintiff received a letter dated March 1, 1972, from the Appeals Council of the Department of Health, Education, and Welfare, stating that on its own motion it had decided to review the hearing examiner's decision. On June 22, 1972, the Appeals Council reversed the decision of the hearing examiner, a copy of which decision is attached hereto as Plaintiff's Exhibit No. 2 and incorporated by reference. The plaintiff has therefore fully and completely exhausted his administrative remedies.

Causes of Action

11. The defendant in terminating plaintiff's child's insurance benefits (disability) upon his marriage to a disabled woman not eligible for Social Security benefits, violated the logical and rational standards required by the due process clause of the Fifth Amendment to the Constitution of the United States. Such termination does not bear a rational or reasonable relationship to the ability of a disabled woman to support her husband.

12. Plaintiff was invidiously discriminated against in that he was terminated from child's insurance benefits (disability) because he married another disabled person not qualified for specific Social Security benefits. Such classification is without a rational basis and is in violation of the Fifth Amendment to the Constitution of the United States.

13. The defendant's deprivation of plaintiff's benefits has caused the plaintiff extreme hardships, suffering and anxiety. The plaintiff has suffered irreparable harm as a result of the termination of benefits and will continue to so suffer until such time as such law is declared unconstitutional.

Prayer for Relief

WHEREFORE, plaintiff respectfully prays that this court:

1. Assume jurisdiction of this cause and convene a three-judge district court pursuant to Title 28 U.S.C. Section 2282 and 2284.

2. Enter a judgment declaring unconstitutional Title 42 U.S.C. 402(d)(1)(D) (Section 202(d)(5) of the Social Security Act as amended) which deprives plaintiff of his right to marry anyone he so chooses without having his child's insurance benefits (disability) terminated, in violation of the due process clause of the Fifth Amendment to the United States Constitution.

3. Issue a permanent injunction restraining defendant, his successor in office, agents, and employees from enforcing Title 42 U.S.C. Section 402(d)(1)(D).

4. Reinstate plaintiff's child's insurance benefits (disability) as of October, 1970.

5. Allow plaintiff such other relief or judgment as the court may deem just and equitable in the premises.

/s/ J. D. Riffel
J. D. RIFFEL
Legal Aid and Defender Society of
Greater Kansas City, Inc.
1718 East 8th Street
Kansas City, Missouri 64106
221-3776

ATTORNEY FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Civil Action No. 20495-1

[Filed Oct. 3, 1972]

JOHN A. JOBST, PLAINTIFF

v.

ELLIOT C. RICHARDSON, SECRETARY OF
HEALTH, EDUCATION AND WELFARE, DEFENDANT

ANSWER

Comes now the defendant, Elliot C. Richardson, by his counsel, Sheryle L. Randol, Assistant United States Attorney for the Western District of Missouri, and for his answer to the captioned complaint, states as follows:

1. That defendant admits the allegations contained in paragraphs 1, 4, 5, 8, 9 and 10 of the complaint.

2. That in response to the allegations contained in paragraph 2, defendant states that Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g) sets out the exclusive remedy for a claim under Title II of the Social Security Act.

3. That in response to the allegations contained in paragraph 3, defendant denies that the requirements for convening a three-judge court have been met.

4. That in response to the allegations contained in paragraphs 6 and 7, defendant states that the facts and issues in this matter are fully set forth in the administrative transcript, including the evidence upon which the findings and decisions complained of are based, a certified copy of which is attached hereto as part of the answer.

5. Defendant denies the allegations contained in paragraphs 11, 12 and 13.

6. That, in accordance with the provisions of Section 205(g) of the Social Security Act (42 U.S.C. § 405(g)), defendant files herein as part of the answer a certified copy of the transcript of the record, including the evidence upon which the findings and decisions complained of are based.

7. Further, defendant states that the findings of fact of the Secretary of Health, Education and Welfare are supported by substantial evidence and are conclusive on the record as a whole.

WHEREFORE, defendant prays for judgment dismissing the complaint, with costs and disbursements and for judgment in accordance with Section 205(g) of the Social Security Act (42 U.S.C. § 405(g)), affirming the decision which is the subject of this complaint.

Respectfully submitted,

BERT C. HURN
United States Attorney

By
SHERYLE L. RANDOL
Assistant United States Attorney

I hereby certify that a copy of the foregoing answer and a copy of the transcript of record have been mailed this 3rd day of October, 1972, to J. D. Riffel, Legal Aid Society, 1718 East 8th Street, Kansas City, Missouri 64106, attorney for plaintiff.

SHERYLE L. RANDOL
Assistant United States Attorney

SUPREME COURT OF THE UNITED STATES

No. 73-1758

[Filed Nov. 15, 1974, R. F. Connor, Clk., U.S. District Court, West District of Missouri]

CASPAR W. WEINBERGER, SECRETARY OF HEALTH, EDUCATION AND WELFARE, APPELLANT

v.

JOHN A. JOBST

APPEAL from the United States District Court for the Western District of Missouri.

THIS CAUSE having been submitted on the statement of jurisdiction and motion to dismiss or affirm,

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the judgment of the said United States District Court in this cause be, and the same is hereby, vacated; and that this cause be, and the same is hereby, remanded to the United States District Court for the Western District of Missouri for reconsideration in light of 42 U.S.C. (Supp. II, 1972) 1381 et seq. (86 Stat. 1329; Pub. L. No. 92-603 (Oct. 30, 1972).

October 15, 1974

[SEAL]

A true copy MICHAEL RODAK, JR.
Test:

Clerk of the Supreme Court of the United States
Certified this 13th day of November, 1974

By /s/ [Illegible]
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Civil Action No. 20495-1

[Filed Apr. 2, 1976, R. F. Connor, Clk., U.S. District Court, West District of Missouri]

JOHN A. JOBST, PLAINTIFF

vs.

DAVID MATHEWS, SECRETARY OF
HEALTH, EDUCATION AND WELFARE, DEFENDANT

STIPULATION OF FACTS

Comes now plaintiff John A. Jobst by his counsel, J. D. Riffel, and defendant David Mathews by Albert D. Hoppe, Assistant United States Attorney, and upon remand of this case to the United States District Court for the Western District of Missouri hereby stipulate and agree that the following facts are admitted and require no proof:

1. John A. Jobst received child's insurance benefits under 42 U.S.C. § 402(d) from January 1957 through September 1970. On October 2, 1970, John Jobst married Sandra Lee and his social security benefits were terminated.

2. John A. Jobst received welfare benefits (partial and total disability) from November of 1970 until December of 1973 for the following periods at the following monthly rates:

Effective dates	Monthly rates
11-17-70	60.00
12-10-70	80.00
10-01-71	76.00
01-30-73	80.00

3. At all times since January 1, 1974, John Jobst has received Supplemental Security Income (SSI) benefits under 42 U.S.C. §§ 1381 *et seq.* at the following monthly rates:

Effective dates	Monthly rates
1/74 through 6/74	105.00
7/74 through 6/75	109.50
7/75 on	118.30

4. On the date of plaintiff's marriage, Sandra Lee, who suffered from cerebral palsy since birth and was determined to be disabled for purposes of Missouri's welfare program was receiving welfare benefits (partial and total disability) from the State of Missouri.

5. Sandra Jobst, nee Lee, received said welfare benefits through December of 1973 in amounts equal to her husband's monthly welfare benefits.

6. Sandra Jobst has received Supplemental Security Income (SSI) under 42 U.S.C. §§ 1381 *et seq.* since January 1, 1974, in amounts equal to her husband's monthly benefits.

7. John and Sandra Jobst received said Supplemental Security Income benefits as "conversion cases." Section 416.300(a) of Social Security Regulations No. 16.

8. Neither John nor Sandra Jobst filed an application for Supplemental Security Income benefits.

9. As of November 1, 1975, John Jobst had received $2,535.50 under the SSI program.

10. As of November 1, 1975, Sandra Jobst had received $2,535.50 under the SSI program.

11. At the present time John Jobst is receiving under the SSI program $118.30 Federal payment, 0 State payment.

12. Sandra Jobst receives the identical payments under the Supplemental Security Income program.

13. Assuming that John Jobst was still receiving child's insurance benefits under 42 U.S.C. § 402(d)(1), his present monthly benefit would be $183.60 and his monthly benefits for prior months would have been as follows:

Effective date	Monthly rate
10/70 through 12/70	115.90
1/71 through 8/72	127.50
9/72 through 2/74	153.00
3/74 through 5/74	163.80
6/74 through 5/75	169.90
6/75 on	183.60

14. Child's insurance benefits are determined by first computing the primary insurance amount under 42 U.S.C. § 415 and then applying the appropriate subsection under 42 U.S.C. § 402 to establish the monthly benefit. In the case of John Jobst, in the event he were receiving child's insurance benefits, he would continue to receive three-fourths of the primary insurance amount of his deceased father.

15. Assuming that John Jobst had continued receiving child's insurance benefits under 42 U.S.C. § 402(d)(1), the SSI benefits payable to plaintiff and spouse would have been as follows:

Effective dates	Plaintiff's Title II benefit	SSI benefits payable to couple (husband's rate/wife's rate)
1/74 thru 2/74	153.00	77.00 (35.50/38.50)
3/74 thru 5/74	163.80	66.20 (33.10/33.10)
6/74	169.90	60.10 (30.05/30.05)
7/74 thru 5/75	169.90	69.10 (34.55/34.55)
6/75	183.60	55.40 (27.70/27.70)
7/75 on	183.60	73.00 (36.50/36.50)

16. John Jobst also maintains that assuming he were receiving child's insurance benefits under 42 U.S.C. § 402(d)(1), that he would be entitled to an additional state supplemental payment under Missouri's current welfare plan.

17. John Jobst, as a childhood disability recipient, would not be subject to the annual earnings test found in 42 U.S.C. 402(b), and his monthly benefit would not be reduced because of wages. However, his wages could

lead to the determination that his disability had ceased. See 42 U.S.C. 423(d)(4); 20 C.F.R. 404.1532-34.

18. Assuming that Mr. Jobst remained eligible for receipt of child's insurance benefits, there would be no restriction with respect to the value of assets he could accumulate.

19. The maximum monthly wages that John and Sandra Jobst may receive as SSI beneficiaries and remain eligible for full benefits is $85 per month. Everything they would earn above $80 would reduce their combined payments by $1.00 for every $2.00 received.

20. As SSI beneficiaries, the maximum value of resources John and Sandra Jobst may have and still remain eligible for benefits is the greater of (a) $2,250 or (b) the amount permitted under the State welfare plan under which they received benefits in December 1973 (Section 416.1205, 416.1260, Exhibit 1), less those items excluded from their resources pursuant to Section 416.210-34, 416.1260-61.

22. The possession and ownership of real property and liquid resources has no effect on the eligibility of recipients for Title II recipients, 42 U.S.C. § 402(d)(1).

23. Assuming that the Court held that John Jobst was entitled to child's insurance benefits at all times since said date of termination, the Title II child's insurance benefits which would have been paid through November 1, 1975, would have been $9,215.80. The defendant maintains that this amount must be reduced by $3,314.20, which would be SSI overpayment to the couple resulting from SSI payments made January, 1974 through October, 1975 (see Nos. 3 and 6) or $4,834.40 versus the SSI payments which would have been made if plaintiff received Title II benefits (see No. 15) or $1,520.20.

24. Subsequent to May, 1975, these benefits would have continued to accrue at the rate of $183.60 per month.

25. Plaintiff and defendant agree to the authenticity and admissibility of attached Exhibits 1, 2 and 3, Regulations No. 16, § 416.300(a) and Subparts K and L; all regulations of defendant in connection with administration of the SSI program; the plaintiff interrogatories

and defendant's answers thereto; and the transcript of the administrative record.

26. Plaintiff and his wife, Sandra Jobst, have been separated since December of 1975.

27. Plaintiff John A. Jobst may reply to defendant's Memorandum of Law filed herein on or before May 3, 1976.

Respectfully submitted,

BURT C. HURN
United States Attorney

By /s/ Albert D. Hoppe
Assistant United States Attorney

ATTORNEY FOR DEFENDANT

/s/ J. D. Riffel
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ATTORNEY FOR PLAINTIFF

SUPREME COURT OF THE UNITED STATES

No. 76-860

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION AND WELFARE, APPELLANT

v.

JOHN A. JOBST

APPEAL from the United States District Court for the Western District of Missouri.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

February 22, 1977

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FEB 18 PAGE 18

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-860

F. DAVID MATHEWS, Secretary of Health, Education, and Welfare,
Appellant

vs.

JOHN A. JOBST,
Appellee

On Appeal from the United States District Court for the Western District of Missouri, Western Division

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MOTION FOR LEAVE TO FILE APPELLEE'S MOTION TO DISMISS OR AFFIRM IN FORMA PAUPERIS

Appellee John A. Jobst by his attorney, Jerome D. Riffel, respectfully moves this Honorable Court to grant him leave to file his Motion to Dismiss or Affirm in forma pauperis and in support thereof states as follows:

1. Judge John W. Oliver, United States District Judge for the Western District of Missouri, declared unconstitutional "42 U.S.C. §402(d)(1)(D) and §402(d)(5) as applied to child's insurance beneficiaries who marry totally disabled persons who do not receive child's insurance benefits." Judge Oliver remanded the claim of appellee John A. Jobst with the express instruction that appellant reinstate the child's insurance benefits.

2. Thereafter the appellant Casper W. Weinberger, Secretary of Health, Education and Welfare, filed his Notice of Appeal to the United States Supreme Court.

3. In Weinberger v. Jobst, 419 U.S. 811, 42 L.Ed.2d 38, 95 S.Ct. 26 (1974), this Court directed the District Court to reconsider its decision in light of 42 U.S.C. §1381 et seq. (Supplemental Security Income).

4. The District Court thereafter found and concluded "that the judgment originally entered should be and will be reinstated;" after which the Secretary sought a second review of the District Court opinion.

5. Appellee believes that the issues raised in his Motion to Dismiss or Affirm are meritorious and of sufficient importance for the consideration of this Court. In support thereof he attaches his Affidavit in support of motion to proceed in forma pauperis, which is hereby incorporated herein by reference.

WHEREFORE, appellee John A. Jobst prays that leave be given to file his motion to dismiss or affirm the appeal of appellant Casper W. Weinberger and that he not be required to pay fees, costs or give security thereunder.

Respectfully submitted,

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of Greater Kansas City
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Attorney for Appellee

CERTIFICATE OF SERVICE

Pursuant to Rule 33 of the Rules of this Court, counsel for appellee caused copies of the foregoing motion to be mailed with air mail postage prepaid to Robert H. Bork, the Solicitor General, Department of Justice, Washington, D.C. 20530, on this 25 day of January, 1977.

Attorney for Appellee

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-860

F. DAVID MATHEWS, Secretary of Health,
Education, and Welfare,
Appellant

vs.

JOHN A. JOBST,
Appellee

On Appeal from the United States District Court for the Western District of Missouri, Western Division

MOTION TO DISMISS OR AFFIRM

Appellee John A. Jobst moves the Court to dismiss the appeal herein on the grounds hereinafter set forth, or to affirm the judgment sought to be reviewed, on the ground that it is manifest that the questions raised by appellant on which the decision in this cause would depend are so unsubstantial as not to need further argument.

SUGGESTIONS

The Question Presented by Appellant for Review of This Court is So Unsubstantial As To Make Further Consideration of the Issues Herein Unnecessary.

1. The Secretary seeks a second review of the decision of Judge John W. Oliver, in which the Court declared unconstitutional "42 U.S.C. §402(d)(1)(D) and §402(d)(5) as applied to child's insurance beneficiaries who marry totally disabled persons who do not receive child's insurance benefits," Jobst v. Richardson, 368 F.Supp. 909, 914 (W.D.Mo. 1974).

In Weinberger v. Jobst, 419 U.S. 811, 42 L.Ed.2d 38, 95

S.Ct. 26 (1974), this Court issued a Memorandum Order directing the United States District Court, Western District of Missouri, to reconsider its decision declaring unconstitutional the sections of the Social Security Act "as applied to child's insurance beneficiaries who marry totally disabled persons who do not receive child's insurance benefits . . .; in light of 42 U.S.C. (Supp. II, 1972) 1381 et seq. (86 Stat. 1389; Pub. L. No. 92-603 (October 30, 1972)." After due consideration of evidence adduced by the parties and the effect of 42 U.S.C. §§1381, et seq. (SSI benefits) on plaintiff Jobst's claim for child disability benefits, the District Court found and concluded "that the judgment originally entered should be and will be reinstated (slip opinion at 1)."

Appellee Jobst now moves the Court for its Order affirming the Memorandum and Order of the United States District Court, Western District of Missouri. His motion "should be granted if the questions on which the decision depends are so wanting in substance as not to need further argument." Hodges v. Snyder 261 U.S. 600, at 601 (1923); see also Missouri Pacific Railroad Co. v. Castle, 224 U.S. 541, 544 (1912); Chicago Rock Island & Pacific Railroad Co. v. Devine, 239 U.S. 52, 54 (1915).

2. The facts and circumstances concerning appellant's termination of Jobst's child's insurance benefits under §202(d) of the Social Security Act are not in dispute. Section 202(d) of the Social Security Act, 42 U.S.C. §402(d), provides child's benefits to disabled-dependent children of insured wage earners, who are receiving old age or disability benefits, or who have died fully insured under the Act. Disabled persons like Jobst receiving these benefits lose them only in the event of death of the recipient or their marriage. Upon marriage to "another individual who has attained the age of eighteen and is entitled to benefits under this subsection [therefore disabled child

beneficiary]," the recipient's benefits continue unaffected. §202(d)(5) of the Social Security Act, 42 U.S.C. §402(d)(5)(B).

Appellant concedes the total disability of appellee's spouse and the only reason cited by the Secretary for termination of Jobst's insurance was his wife's non-receipt of child's insurance benefits. Jobst's wife (like Jobst) suffers from cerebral palsey but was ineligible (non-insured parent) for child's insurance benefits under the Social Security Act.

3. The suggestion of the Secretary to the contrary notwithstanding, the question presented to the Court for review is clearly insubstantial. As will be shown infra, the decision affects only a relatively small number of child's insurance beneficiaries who marry a totally disabled person not receiving child's insurance benefits. The sections alleged to be affected by the Secretary[1] pertain to divorced wives, widows, widowers, and surviving or divorced mothers under different circumstances and where different legislative and administrative considerations predominate.

The District Court properly applied the test established by this Court in Jimenez v. Weinberger, 417 U.S. 628 (1974), governing the propriety (under the Due Process Clause of the Fifth Amendment) of congressional classifications established by Congress in the Social Security Act. The facts and circumstances herein are truly analygous to those in Jimenez, Id., and do not involve "a principle that has general application under the Social Security Act . . .," as alleged by defendant-appellant Secretary.

4. The Secretary demonstrated the unsubstantiality of the question raised by his failure to justify the invidious

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[1]See Sections 202(b)(1)(C), 202(e)(1)(A), 202(f)(1)(A), and 202(g)(1)(A), of the Social Security Act: 42 U.S.C. §§402(b)(1)(C), (402(e)(1)(A), 402(f)(1)(A), and 402(g)(1)(A).

discrimination resulting from the statutory classifications established as between two classes of recipients who are married disabled persons which are indistinguishable except on the basis that one class marries disabled persons who are eligible for benefits under the Act and the other marries totally disabled persons who are ineligible.

In this connection the District Court appropriately considered whether there was a rational legislative basis for the distinctions resulting in light of the purposes of the Social Security Act:

> No actual basis for such a distinction has been suggested nor, we conclude, does one exist. The distinction between the two classes of beneficiaries has absolutely no relevance to the purpose for which the general classifications in the statute were drawn. Indeed, the statutory distinctions are antithetical to that purpose; they result in a situation similar to the one here, in which benefits are denied to a beneficiary who marries a person who cannot provide a source of support to the beneficiary. Indeed it is clear that insurance payments were extended to children by §202(d) "to provide at least some measure of income and security to those who have lost a wage-earner on whom they depended." (Citations omitted.) Jobst v. Richardson, 368 F.Supp. 909, 913 (W.D.Mo. 1974).

Likewise in Jimenez, discriminatory statutory classification of subclasses of illegitimate children was examined to determine whether a rational basis was demonstrated by the Secretary relating to the statutory purpose of provision for "disabled child's benefits to the dependent disabled child of a deceased or retired insured worker."[2] This Court rejected the reasoning of the Secretary for reasons similar to those stated above by the District Court:

> Even if children might rationally be classified on the basis of whether they are dependent upon their disabled parent, the Act's definition of these two subclasses of illegitimates is "over-inclusive" in that it benefits some children who are legitimated, or entitled to inherit, or illegitimate solely because of a defect in the marriage of their parents, but who are not dependent upon their disabled parent. Conversely, the Act is "under-inclusive" in that it conclusively excludes some illegitimates in appellants' subclass who are, in fact, dependent upon their disabled parent. Thus, for all that is shown in this record, the two subclasses of illegitimates stand on equal footing , and the potential for spurious claims is the same as to both; hence to conclusively deny one subclass benefits presumptively available to the other denies the former the equal protection of the law guaranteed by the Due Process provision of the Fifth Amendment. Supra, 42 Law Week at 4950, 4951.

The Secretary misapplies the above test asserting that inasmuch as the congressional purpose in providing an exception to termination of benefits for those recipients who marry disabled persons also receiving child's insurance benefits is consistent with the purposes of the Social Security Act, the section is rationally based and does not offend the Due Process Clause of the Fifth Amendment. This observation, however, is at best superfluous since it ignores the rationality of the discriminatory classifications of beneficiaries themselves.

The "legislation must be drawn so that the distinctions made have 'some relevance to the purpose for which the classification is made.'" Jobst v. Richardson, supra, at 913; quoting Baxstrom v. Herold, 383 U.S. 107, 111 (1966). Furthermore, the Secretary neglects to discuss whether the classifications created by §202(d) of the Social Security Act are free from invidious discrimination:", Dandridge [referring to Dandridge v. Williams, 397 U.S. 471 (1970)] evinced no intention to suspend the operation of the Equal Protection Clause in the field of social welfare law. State laws and regulations must still 'be rationally based and free from invidious discrimination.'" Hagans v. Lavine, 415 U.S. 528, 539 (1974).

5. The Secretary then incorrectly suggests the applicability of the maxim, "that a classification may not properly be held to violate equal protection principles because it is

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[2] 1956 U.S. Code Cong. & Adm. News, at 3878.

not made with mathematical nicety or because in practice it results in some inequality," and that this Court's approval of the District Court opinion "would require Congress to abandon use of broad, experimentally based assumptions in the Social Security Act in favor of an individualized means test."[3]

Appellant does not deny the assertion of the Secretary that Congress may terminate the benefits of recipients when they separate from the family unit and may allocate benefits on the relative likelihood of dependency, but does assert the clear inapplicability of these generally acceptable principles to the situation here.

That inapplicability is illustrated by appellant's mistaken reliance on a recent decision of this Court, Mathews v. DeCastro, 45 Law Week 4049 (December 13, 1976). In the DeCastro case a difference in the statutory treatment of married and divorced women was held to be permissible under the Fifth Amendment to the United States Constitution. This Court reversed the District Court which had voided the statutory provision denying benefits on the basis that "there is no rational basis for concluding that a married wife having a dependent child in her care has a greater economic need than a divorced wife caring for such child." Citing Helvering v. Davis, 301 U.S. 619, 640.

The District Court was reversed because the test as applied to the discriminatory classification examined only the "needs" of the beneficiary instead of whether the classification established was consistent with the purpose of the Social Security Act to protect the insured worker and his dependents. Close examination of the classifications created moreover demonstrated there was a "reasonable basis" for the classifications since the divorce of the recipient clearly showed less likelihood of dependence on the deceased insured-worker and hence any discrimination was

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[3]See appellant's Jurisdictional Statement at p. 9.

rationally based in terms of the legislative purpose of the Social Security Act.

It does not follow that termination of Jobst's benefits is similarly related to the legislative history of the Social Security Act. As pointed out by this Court, the Secretary must look to whether the classifications here have some rational basis: "Government does not deny equal protection merely because of classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality,'" Mathews v. DeCastro, supra, at 4050, citing Dandridge v. Williams, 397 U.S. 471, 485.

The Secretary thus correctly parrots the proper caveat that the classification need not be made with mathematical nicety but ignores in toto the remaining requirement that it have some "reasonable basis." Again, "Dandridge evinced no intention to suspend the operation of the Equal Protection Clause in the field of social welfare law. State laws and regulations must still be 'rationally based and free from invidious discrimination.'" Id., 397 U.S. at 487. Termination of benefits as a result of John Jobst's marriage to Sandra Jobst does not relate in any manner whatever to the likelihood of continuing dependency on the lost wage earner as impliedly conceded by the Secretary. The failure of the Secretary to suggest such a rational basis is a fatal omission and this appeal therefore raises no substantial question.

6. The Secretary finally suggests that legislative and administrative considerations dictate the reversal of the District Court. Appellant again does not question the conclusions of the Secretary that Congress may properly establish presumptions or other tests which serve administrative convenience

of processing applications for benefits, that benefits may be allocated on likelihood of dependency, and that a proper test for gauging the continuing eligiblity of beneficiaries for child's insurance benefits is whether the terminating event removes their dependency on the deceased wage earner. Simply stated, none of these conclusions appropriately considered affect the decision of the District Court.

In this respect the Secretary relies principally upon F. W. Mathews v. Lucas, ___ U.S. ___, 49 L.Ed.2d 651 (1976). In Mathews, the Supreme Court considered whether an alleged discriminatory classification established by the Social Security Act which had the effect of assuring presumptive eligibility of dependent legitimate children of deceased insured workers while illegitimate children of deceased insured workers were required to establish their dependency on the deceased person's income, violated the Due Process Clause of the Fifth Amendment to the United States Constitution.

In reviewing the District Court decision this Court perused the character of the discrimination and its relationships to legitimate legislative aims. Id. at 661-663. The Court then sustained the constitutionality of the section concerned on the bases that there was no blanket exclusion of surviving illegitimate children and hence no invidious discrimination under Jimenez, supra, and that Congress's purpose in establishing the statutory presumption of dependency of legitimate children properly served administrative convenience. "Such presumptions in aid of administrative functions, though they may approximate, rather than precisely mirror, the results that case-by-case adjudication would show are permissible under the Fifth Amendment, so long as the lack of precise equivalence does not exceed the bounds of substantiality tolerated by the applicable level of scrutiny. Id. at 663; citing Weinberger v. Salfi, 422 U.S. at 772 (Emphasis

added).

Therefore, the Court sustained the limited use of such presumptions as an aid to efficient administration of benefits by the Social Security Administration. Its appropriateness is to be judged on the basis of "the materiality of the relation between the statutory classifications and the likelihood of dependency they assertedly reflect [which] need not be "scientifically substantiated." Id. at 663.

The Secretary, however, fails to point out that these considerations are inapplicable to the circumstances in fact presented here. These classes are indistinguishable except on the basis that one class marries disabled persons who are eligible for benefits under the Act and the other marries disabled persons who are ineligible. On the solitary basis of this differential the latter class loses its entitlement to lifetime child's benefits in total disregard of the recipient's continuing dependency on the deceased wage earner. The Secretary offers no justification for this discrimination and it is therefore prohibited under Jimenez v. Weinberger, supra. "[T]o conclusively deny one subclass benefits presumptively available to the other denies the former the equal protection of the laws guaranteed by the Due Process provision of the Fifth Amendment." Id. at 637. In Mathews v. Lucas, relied upon by the Secretary, however, such administrative considerations were proper since "any other eligible child may qualify for survivorship benefits by showing contribution to support, or cohabitation, at the time of death."

Other considerations also demonstrate the lack of substance of the Secretary's argument. Sandra A. Jobst is a totally disabled recipient of Supplemental Security Income (which is administered by the Secretary) under Title XVI. Sandra Jobst previously received federally aided welfare benefits from the State of Missouri which were substantially regulated by defendant

Secretary. Defendant Secretary has agreed at all times relevant to this action that Sandra Jobst was totally and completely disabled and the Secretary can therefore not be taken seriously in his suggestion that benefits for John A. Jobst would cause administrative havoc for the Social Security Administration.

Congress in fact at the time of the enactment of child's insurance benefits stated that "[d]etermination of disability generally would not be difficult because of the few cases involved. Most of the cases would be the result of congenital conditions or conditions existing since early childhood, including mental deficiency."[4] The Secretary states moreover that the difference in benefits for the "family unit" is small therefore assuring little impact initially on the distribution of "finite resources."

The District Court therefore properly concluded that administrative convenience does not justify the patently overt discrimination as to this subclass which happens to (1) marry, (2) a person who is also totally disabled, (3) who does not receive child's insurance benefits, under circumstances where the secretary has available applicable disability standards and where the marriage is clearly unrelated to the continuing dependency of the insurance recipient.[5]

7. Title XVI does not underscore the reasonableness of the allocation of Social Security benefits herein to disabled children of insured workers, and Title XVI is legislatively unrelated to the work-based Social Security program.

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[4]1956 U.S. Code Cong. & Adm. News at 3878.

[5]The irrationality of the termination of Jobst under the purposes of the Social Security Act is further demonstrated by his impending divorce from his wife Sandra. He will soon (February 13, 1977) dissolve his marriage, but nevertheless must depend on welfare benefits even though at no time has there been any change whatever concerning his continuing dependency on the insured wage earner. See affidavit in support of motion to proceed herein in forma pauperis.

The Secretary alleges that the $20.00 differential in monthly welfare benefits now received by the new Jobst family as compared to the greater amount of their monthly income had Jobst continued receiving child's insurance benefits, substantiates appellant's argument that the discrimination resulting is reasonable. This argument is based on his contention that SSI was formed "to afford more adequate protection to the family as a unit."[6]

Problematically, the resulting differential in benefits for John A. Jobst, the dependent of an insured worker, is even more substantial and the Secretary would owe Jobst in excess of $8,000 in back benefits in the event the District Court's decision stands.[7] Even more importantly, the dependence of Jobst on the earnings of the deceased wage earner continues without regard to the event of his marriage to Sandra A. Jobst.

"The primary objective of the Social Security Act was to provide workers and their families with basic protection against hardship created by the loss of earnings due to illness or old age. Mathews v. DeCastro, supra, at 4050. The primary difference between Social Security and Supplemental Security Income not recognized by the Secretary was pointed out by this Court in the opinion in the DeCastro case: "Again, the insurance program, unlike the public assistance provisions [referring to child's disability benefits and supplemental security income] was not need based and instead was designed to protect against the specific economic hardships created by involuntary, premature retirement." Id. at 4050, footnote 6, referring to H.R.Rep.No. 1300, 800 1st Cong., 1st Sess. CSS. 24-28, 53-54

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[6]See appellant's Jurisdictional Statement at p. 7.

[7]The Secretary contends this amount should be reduced by some $3,000; thus conceding that even if Jobst was forced to reimburse the Secretary for his SSI benefits, the Secretary would have a remaining obligation of approximately $5,000.

(1949).

As was stated in Mathews v. DeCastro, "the focus of the Social Security Act was specifically on 'adequate protection for [the husband's] family.'" Id. at 4051. Congress could therefore rationally decide that in denying divorced women Social Security benefits under the circumstances there that "the problems created for divorced women remain less pressing than those faced by women who continue to live with their husbands." Id. at 4051. It does not follow that the classification created here either serves administrative convenience or is consistent with the purposes of the legislation. In fact, the Secretary, impliedly admits by his failure to suggest a justification, that the classification of John A. Jobst as a nonrecipient on the basis of his marriage to a totally disabled person is invidiously discriminatory and unrelated to the work-based social security program. This fact remains unchanged upon consideration of his subsequent receipt of welfare benefits.

8. For these reasons appellee suggests the Secretary's appeal herein should be dismissed or in the alternative the decision of the District Court affirmed.

Respectfully submitted,

Jerome D. Riffel

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No. 76-860

In the Supreme Court of the United States

OCTOBER TERM, 1976

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION, AND WELFARE, APPELLANT

v.

JOHN A. JOBST

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

BRIEF FOR THE APPELLANT

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Argument:	
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In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-860

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION, AND WELFARE, APPELLANT

v.

JOHN A. JOBST

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

BRIEF FOR THE APPELLANT

OPINIONS BELOW

The opinion of the district court on remand (J.S. App. A, pp. 1a-4a) is not reported. The earlier opinion of the district court (J.S. App. B, pp. 5a-17a) is reported at 368 F. Supp. 909.

JURISDICTION

The judgment of the district court, reinstating the earlier judgment declaring Sections 202(d)(1)(D)

and 202(d)(5) of the Social Security Act unconstitutional as applied to appellee, was entered on July 27, 1976 (J.S. App. E, p. 23a). A notice of appeal to this Court was filed on August 24, 1976 (J.S. App. C, pp. 18a-19a). On October 13, 1976, Mr. Justice Blackmun extended the time for docketing the appeal to and including November 22, 1976, and on November 15, 1976, he further extended the time to and including December 22, 1976. The jurisdictional statement was filed on the latter date, and probable jurisdiction was noted on February 22, 1977 (App. 17).

QUESTION PRESENTED

Whether Sections 202(d)(1)(D), 202(d)(5), and 202(s)(2) of the Social Security Act, which provide that secondary social security benefits received by a disabled dependent child of an insured wage earner shall terminate when the child marries an individual who is not entitled to benefits under the Act, are consistent with the Due Process Clause of the Fifth Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall be * * * deprived of * * * property, without due process of law * * *.

Section 202 of the Social Security Act, 49 Stat. 623, as amended, 42 U.S.C. (and Supp. V) 402, provides in pertinent part:

(d)(1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits or of an individual who dies a fully or currently insured individual, if such child—

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time student and had not attained the age of 22, or (ii) is under a disability (as defined in section 423(d) of this title) which began before he attained the age of 22, and

(C) was dependent upon such individual—

* * * * *

shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and ending with the month preceding whichever of the following first occurs—

(D) the month in which such child dies or marries,

* * * * *

(5) In the case of a child who has attained the age of eighteen and who marries—

(A) an individual entitled to benefits under subsection (a), (b), (e), (f), (g), or (h) of this section or under section 423(a) of this title, or

(B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection,

such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage; * * *.

* * * * *

(s)(2) * * * [S]o much of subsection[] * * * (d)(5) * * * of this section as precedes the semicolon, shall not apply in the case of any child unless such child, at the time of the marriage referred to therein, was under a disability * * *.

STATEMENT

1. Under Section 202(d) of the Social Security Act, 49 Stat. 623, as amended, 42 U.S.C. (and Supp. V) 402(d), child's insurance benefits are provided to the dependent children of wage earners who receive old-age or disability benefits or who have died fully or currently insured under the Act. To be entitled to child's insurance benefits, the dependent child at the time of his application must be unmarried and either under 18 years of age (or a full-time student under age 22) or under a disability which began before he attained age 22. Section 202(d)(1)(B) of the Act.

Section 202(d)(1)(D) of the Act provides that child's insurance benefits shall terminate when the child marries. There is, however, a limited exception to this general provision for a disabled child (who has attained the age of 18) who marries an individual also entitled to one of several categories

of insurance benefits under the Act. Sections 202(d)(5) and 202(s)(2) of the Act.[1] Such a marriage does not terminate the disabled child's entitlement to benefits. Section 202(d)(5). But a disabled child who marries an individual who is not entitled to benefits under the Act falls outside the exception; that disabled child's benefits, like those of nondisabled children, are terminated by marriage.

2. Appelle John A. Jobst, who has been disabled since birth from cerebral palsy, was awarded child's insurance benefits in 1957, at age 25, upon the death of his father, who had been an insured wage earner under the Act (Tr. 61).[2] In 1970 appellee married a person who likewise suffered from cerebral palsy but who was not entitled to child's insurance or any other form of benefit under Title II of the Act (Tr. 36, 37). Because of this marriage, appellee's child's insurance benefits were terminated by the Secretary pursuant to Section 202(d)(1)(D) of the Act (Tr. 7; see Tr. 63).

After exhausting his administrative remedies, appellee instituted this action in the United States District Court for the Western District of Missouri to review the Secretary's termination of his benefits.

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[1] Section 202(d)(5) on its face appears to state a general rule applicable to all dependent children, but Section 202(s)(2) narrows the application of that rule to dependent children who are disabled.

[2] "Tr." refers to the transcript of the administrative proceedings relating to appellee's claim for benefits. The relevant facts of this case are not in dispute.

On January 14, 1974, the district court held that Section 202(d)(1)(D), which provides generally that eligibility for child's insurance terminates upon marriage, and Section 202(d)(5), which provides a limited exception from that provision in favor of disabled child's insurance beneficiaries who marry other beneficiaries under Title II of the Act, are unconstiutional "as applied to child's insurance beneficiaries who marry totally disabled persons who do not receive child's insurance benefits" (J.S. App. B, p. 17a). The court reasoned that these statutory provisions violated the equal protection principles that inhere in the Due Process Clause of the Fifth Amendment because there was "[n]o rational basis" for the statutorily created "distinction between beneficiaries who marry disabled persons who do receive benefits and beneficiaries who marry disabled persons who do not receive benefits" (J.S. App. B, p. 13a). The court declared the statutory provisions unconstitutional and remanded the case to the Secretary "with the * * * direction that [appellee's] claim be allowed" (J.S. App. B, p. 17a).

3. The Secretary appealed directly to this Court (No. 73-1758). The jurisdictional statement pointed out (pp. 7-8) that since January 1, 1974, appellee and his wife had been receiving a monthly benefit of $210 under the newly enacted program of Supplemental Security Income for the Aged, Blind, and Disabled, Title XVI of the Social Security Act, as added by the Social Security Amendments of 1972, 86 Stat. 1329, 42 U.S.C. (Supp. V) 1381 *et seq.*, and that that amount was only approximately $20 per

month less than the combined amount appellee and his wife would have received under both the child's insurance and the supplemental security income provisions of the Act had appellee remained entitled to child's insurance benefits. The change in appellee's circumstances caused by the enactment of the supplemental security income program was not a part of the record before the district court when it had rendered its decision. On October 15, 1974, this Court vacated the judgment of the district court and remanded the case for reconsideration in light of the new program. 419 U.S. 811-812.

On remand, the district court held that the supplemental security income program "simply had nothing to do with the questions presented" in this case (J.S. App. A, p. 3a). The court therefore reinstated its original judgment of January 14, 1974, holding Sections 202(d)(1)(D) and 202(d)(5) unconstitutional as applied (J.S. App. A, p. 4a).

INTRODUCTION AND SUMMARY OF ARGUMENT

Title II of the Social Security Act establishes a program of social insurance under which covered wage earners and their families receive protection against the economic consequences of the wage earners' old age, disability, and death. Primary insurance benefits are payable to the aged or disabled wage earner, and several other categories of benefits ("secondary" benefits) are payable to other individuals on the basis of their relationship to the wage earner. Secondary insurance benefits at pres-

ent are payable under specified conditions to the wage earner's spouse or surviving spouse, his children, and his parents. Section 202(b), (c), (d), (e), (f), (g), and (h) of the Act. The question in this case concerns the constitutionality of the provisions of Section 202(d) under which the child of an eligible wage earner loses entitlement to secondary insurance benefits when he or she marries, unless the child is disabled and marries an individual who also is eligible to receive insurance benefits under Title II of the Act.

The statutory provisions governing the payment of child's insurance benefits, like the provision governing payment of benefits to divorced wives that was sustained by this Court in *Mathews* v. *de Castro*, No. 75-1197, decided December 13, 1976, are the product of a step-by-step legislative process that has given shape and content to the nation's evolving social welfare scheme. The history of these provisions illustrate that, particularly in the allocation of secondary benefits, as the nation has developed economically, and as prevailing views have shifted with respect to the extent of the government's responsibility for the individual's economic well-being, Congress has gradually but steadily added to the categories of eligible beneficiaries. In responding to changing social conditions and priorities by enlarging the coverage of the Social Security Act, Congress has acted in the time-honored tradition of legislative reform by moving one step at a time to address "the phase of the problem which seems most

acute to the legislative mind." *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 489.

When the Social Security Act was first enacted, only the wage earner himself was entitled to benefits. 49 Stat. 623. In 1939, benefits were extended to members of the wage earner's immediate family, including unmarried children under the age of 18. 53 Stat. 1364. Later, benefits were further extended to unmarried disabled children over the age of 18. 70 Stat. 807. Initially, the benefits of all such children terminated upon marriage. See 53 Stat. 1364; 70 Stat. 807. But in 1958 Congress provided for the continuation of the insurance benefits of disabled children when they marry other individuals entitled to insurance benefits under the Act. 72 Stat. 1030. See Sections 202(d)(1)(D), 202(d)(5), and 202(s)(2) of the Act.

In this case, the district court found that the 1958 amendment rendered the statutory scheme unconstitutional with respect to certain individuals who had not been affected by that amendment: the court held that the exception thereby made to the general rule, that benefits terminate upon marriage, was unconstitutionally narrow, and that the exception must be enlarged to satisfy the requirements of due process. The court reasoned that the 1958 amendment created a distinction "between beneficiaries who marry disabled persons who do receive benefits and beneficiaries who marry disabled persons who do not receive benefits," a distinction for which the court could perceive "[n]o rational basis" (J.S. App. B, p. 13a).

We show below that the general rule terminating child's insurance benefits upon marriage is reasonable (pp. 13-22, *infra*) and that the narrowness of the exception to that general rule also is rationally based (pp. 22-27, *infra*). *A fortiori*, the termination of appellee's benefits upon marriage was reasonable. Due process demands no more. Like the statute under consideration in *Mathews* v. *de Castro*, *supra*, the statutes here "[are] entitled to a strong presumption of constitutionality" (slip op. 5). Since the challenged classification is not "suspect" and does not bear upon a fundamental constitutional interest, "[i]f the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals, then the action of Congress is not so arbitrary as to violate the Due Process Clause of the Fifth Amendment." *Richardson* v. *Belcher*, 404 U.S. 78, 84. Ordinary social welfare classifications, such as the one challenged here, satisfy the requirements of equal protection and due process unless " 'the statute * * * [is] utterly lacking in rational justification.' " *Weinberger* v. *Salfi*, 422 U.S. 749, 768. See also *Mathews* v. *Lucas*, 427 U.S. 495; *Mathews* v. *de Castro*, *supra*. The statutory provisions at issue in this case are constitutional under that test.

A. Child's insurance benefits were established generally "to afford more adequate protection to the family as a unit" (H.R. Rep. No. 728, 76th Cong., 1st Sess. 7 (1939)), and in particular to replace the support lost by the wage earner's dependent children as a consequence of his death, disability, or

retirement. A child's marriage, however, normally significantly lessens or terminates the relationship of dependency between the child and his economic parent, a relationship that "is the critical factor" (*Califano* v. *Goldfarb*, No. 76-699, decided March 2, 1977 (slip op. 13; plurality opinion)) in determining eligibility for secondary insurance benefits. Accordingly, Congress' decision generally that children receiving child's insurance benefits lose their entitlement to such benefits when they marry is reasonable.

Some individual married children may remain needy after their marriage, but the insurance provisions of Title II of the Act were not designed, and as a constitutional matter need not be designed, to identify and meet individualized instances of need. Instead, Congress has enacted the supplemental security income program and other general assistance programs to work in tandem with the insurance program; these newer programs allocate assistance to needy persons who are not covered by the insurance program. Under the supplemental security income program, appellee and his wife have been receiving only marginally less than they would have received had appellee's child's insurance benefits been continued. Congress has thus responded to and provided for the needs of appellee and other similarly situated individuals in an entirely reasonable manner.

B. As part of a set of amendments to the Social Security Act, Congress in 1958 provided for the continuation of child's insurance benefits to disabled children who marry individuals who also are entitled

to benefits under the Act. As the legislative history shows, these amendments were designed to eliminate a particular form of hardship: the termination of or substantial reduction in insurance benefits that was occasioned by the marriage of one insurance beneficiary to another. Appellee's case does not fall within the limited circumstances with which Congress was concerned. Moreover, whereas marriages between insurance beneficiaries are easily identified and treated within the existing structure of Title II, Congress could not have amended Title II to cover the occasional instances of continued need in other marriages without substantially altering the method of allocating benefits under that Title. The Due Process Clause does not require such an alteration and thus it does not require that the narrow exception to the general rule that benefits terminate upon marriage be extended to cover appellee's case.

ARGUMENT

SECTIONS 202(d)(1)(D), 202(d)(5), AND 202(s)(2) OF THE SOCIAL SECURITY ACT, WHICH PROVIDE THAT SECONDARY SOCIAL SECURITY BENEFITS RECEIVED BY A DISABLED DEPENDENT CHILD OF AN INSURED WAGE EARNER SHALL TERMINATE WHEN THE CHILD MARRIES AN INDIVIDUAL WHO IS NOT ENTITLED TO BENEFITS UNDER THE ACT, ARE CONSISTENT WITH THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

A. The General Rule that an Individual's Entitlement to Child's Insurance Benefits Terminates Upon Marriage is Rational

When the child's insurance provisions were adopted in 1939, and also when those provisions were expanded in 1956 to include disabled children over the age of 18, there was no exception to the general rule that benefits under those provisions terminate when the child marries. 53 Stat. 1364; 70 Stat. 807. That general rule is reasonable.

1. Child's benefits, like other secondary benefits under the Act, were established "to afford more adequate protection to the family as a unit." H.R. Rep. No. 728, 76th Cong., 1st Sess. 7 (1939). See *Califano* v. *Goldfarb*, No. 75-699, decided March 2, 1977 (slip op. 9, 14; plurality opinion). Congress understood that members of a wage earner's family suffered most from a loss of or reduction in the wage earner's income. The "primary objective" of secondary benefits thus was "to insure covered wage earners and their families against the economic and social impact on the family normally entailed by loss

of the wage earner's income * * *." *Mathews* v. *de Castro*, *supra* (slip op. 5); *Califano* v. *Goldfarb*, *supra* (slip op. 13; plurality opinion).

Benefits were provided to the wage earner's dependent children in order to enhance the family unit's economic well-being and, in particular, to replace the support lost by those children as a consequence of the wage earner's death, disability, or retirement. See *Mathews* v. *Lucas*, *supra*, 427 U.S. at 507. The provision of benefits on the basis of the wage earner's social security account also was viewed as helping to preserve the wage earner's role as provider and to sustain the child's sense of security in the family as a unit. Hearings on the Social Security Amendments of 1939 before the House Committee on Ways and Means, 76th Cong., 1st Sess. 32-33 (1939). Congress determined to continue benefits to older unmarried disabled children in view of the fact that generally such children "are as dependent on their parents after attaining age 18 as before * * *." S. Rep. No. 2133, 84th Cong., 2d Sess. 2 (1956).

Normally, upon marrying, a child departs from "the family as a unit" and establishes a new family. As a general matter, married children are considerably less likely than unmarried ones to be dependent on their parents for the provision of their essential economic needs; they therefore are correspondingly less likely to be significantly affected, in terms of support, by the wage earner's death, disability, or retirement. When an individual marries, moreover,

he is much less likely than when he was a child to look upon his parents as his providers or to require, for a sense of security and well-being, that his parents maintain that role.

In short, in ordinary circumstances a child's marriage significantly reduces or terminates the relationship of dependency that "is the critical factor" (*Califano* v. *Goldfarb*, *supra* (slip op. 13; plurality opinion)) in determining eligibility for secondary insurance benefits. Marriage is an "objective and apparently reasonable indicator[]" (*Mathews* v. *Lucas*, *supra*, 427 U.S. at 516) of the time by which an individual's special need for parental support has ended. Congress reasonably determined that a child who marries removes himself from the class of individuals for whom secondary benefits were principally designed.

Congress therefore provided that a child of a deceased, disabled, or retired wage-earner is eligible to receive child's insurance benefits only if he is unmarried at the time his application for benefits is filed. Section 202(d)(1)(B). For the same reason, Congress provided generally that children receiving child's insurance benefits lose their entitlement to such benefits when they marry. Section 202(d)(1)(D). These classifications are "justified as reasonable empirical judgments that are consistent with a design to qualify entitlement to benefits upon a child's dependency * * *." *Mathews* v. *Lucas*, *supra*, 427 U.S. at 510.

In holding Section 202(d)(1)(D) unconstitutional as applied in the circumstances here, the district

court in essence disapproved of Congress' extrapolation from its general observation of human experience—that marriage normally results in the establishment of a new, self-sufficient household—to a broad bar on the payment of benefits to most married children of the wage earner. The court's analysis rests upon the fact that some beneficiaries, themselves incapable of gainful employment, may "marr[y] * * * person[s] who can not provide a source of support" (J.S. App. B, p. 14a), and that such individuals would in fact remain dependent upon the wage earner, or the secondary benefits payable on his account, for support. Yet a holding of unconstitutionality based upon that particularized concern contravenes the principle, which the court recognized but did not apply, "that a classification may not properly be held to violate equal protection principles because it 'is not made with mathematical nicety or because in practice it results in some inequality'" (J.S. App. B, pp. 12a-13a).

More fundamentally, the district court's holding of unconstitutionality reflects a misunderstanding of the rationale underlying the legislatively chosen method of allocating secondary benefits. The court ruled, in effect, that because appellee married another disabled individual, who in fact was unable to support him, appellee's need continued and therefore, as a constitutional matter, his benefits also must continue. But the existence of need as such is neither a necessary nor a sufficient basis for entitlement to secondary benefits. Title II "is basically a statutory insurance

policy." *Weinberger* v. *Salfi*, *supra*, 422 U.S. at 775. Insurance benefits under Title II are "payable wholly regardless of the need of the recipient." H.R. Rep. No. 615, 74th Cong., 1st Sess. 1 (1935). Concededly, presumed need appropriately has guided Congress in expanding the categories of eligible beneficiaries under this social insurance system; but it has remained a fundamental principle of that system that payments are to be made on the basis of broad statutory classifications without individualized determinations of need.

Individualized determinations of need, moreover, are not required by the Due Process Clause. Congress constitutionally may allocate secondary social security benefits on the basis of an individual's membership in the primary beneficiary's family unit and may deny or terminate benefits when the individual separates from that unit. See *Mathews* v. *de Castro*, *supra*. Furthermore, Congress need not require a case-by-case determination of actual dependency upon the wage earner, but instead may allocate benefits on the basis of broad statutory classifications that reflect the relative likelihood of dependency. *Mathews* v. *Lucas*, *supra*. That is what Congress has done in the case of child's insurance benefits. Such general statutory classifications are "a widely accepted response to legitimate interests in administrative economy and certainty of coverage * * * [and the government] may rely on such [classifications] so long as they comport with * * * standards of legislative reasonableness * * *." *Weinberger* v. *Salfi*, *supra*, 422 U.S. at 776-777.

The constitutional inquiry in this case is similar to that in *Mathews* v. *de Castro*, *supra*, where the Court unanimously upheld the constitutionality of a provision of the Social Security Act governing the eligibility of divorced wives for secondary benefits. Stated generally, the question here and in *de Castro* is the same: whether an individual's separation from the family unit of the wage earner and establishment of a new family unit—in *de Castro*, by a wife's divorce from the wage earner; here, by the marriage of the wage earner's child—is a constitutionally sufficient justification for termination of the benefits to which the individual otherwise would be entitled on the basis of the wage earner's Social Security account. In *de Castro*, the Court began with the premise that Congress' "primary objective was to provide workers and their families with basic protection against hardships created by the loss of earnings" (slip op. 5). The Court therefore characterized as "hardly in point" (slip op. 6) the argument that many divorced wives are economically needy; instead, it stressed the impact that divorce has on the former wife's relationship to the wage earner's family unit. The Court upheld the statutory provision on the ground that "Congress could have rationally assumed that divorced husbands and wives depend less on each other for financial and other support than do couples who stay married" (slip op. 8).

The same analysis applies here. Congress has determined that it is probable that a child's marriage marks a point by which the child's economic de-

pendency upon his parents has become significantly lessened if not terminated altogether. This determination is amply supported by common exerience and is reasonable. The assumption that married individuals are no longer substantially dependent upon their parents for essential economic support, "though [it] may approximate, rather than precisely mirror, the results that case-by-case adjudication would show, [is] permissible under the Fifth Amendment * * *." *Mathews* v. *Lucas*, *supra*, 427 U.S. at 509. See also *Weinberger* v. *Salfi*, *supra*, 422 U.S. at 768-769. Congress further determined that this probability of a significant reduction in dependency warrants termination of the child's secondary benefits upon marriage.[3] Such categorical assumptions about dependency and need conduce to the efficient administration of the program and afford a constitutionally permissible basis upon which to allocate secondary social security benefits. *Mathews* v. *de Castro*, *supra*; *Mathews* v. *Lucas*, *supra*.

2. Because of his marriage, appellee no longer is entitled to secondary insurance benefits. But Congress has enacted a supplemental security income program for aged, blind, and disabled individuals, Title XVI of the Social Security Act, 42 U.S.C. (Supp. V) 1381 *et seq.*, under which appellee and his wife have been receiving only approximately $20 per month less than the combined amount they would have received in both child's insurance bene-

[3] Congress made a similar determination with respect to age: except for disabled children, benefits terminate when the child reaches age 18 or, in the case of a student, age 22.

fits and supplemental security income had appellee's child's insurance benefits not been terminated (App. 13-14). Thus, although appellee has lost his entitlement to secondary benefits under Title II of the Act, Congress has provided substantial relief under another benefit program.

On remand, the district court held that the supplemental security income program "simply ha[s] nothing to do with the questions presented" in this case (J.S. App. A, p. 3a). We believe that the child's insurance provisions challenged here may be sustained as constitutional without reference to the existence of the supplemental security income program. But, contrary to the district court's holding, Title XVI does bear upon the issues presented here, for it underscores the reasonableness of the allocation of secondary social security benefits.

At bottom, the district court's principal concern in this case was that some disabled child's insurance beneficiaries whose benefits were discontinued upon marriage would be needy (see J.S. App. B, p. 14a). But the statutory method of allocating secondary insurance benefits is not designed, and as a constitutional matter need not be designed, to identify and meet individualized instances of need: Congress did not intend Title II to have such a purpose (*Mathews* v. *de Castro, supra* (slip op. 5-6 n. 6)), and the alterations in Title II that would be necessary to accomplish that purpose are not constitutionally required (see, *e.g.*, *Mathews* v. *de Castro, supra; Mathews* v. *Lucas, supra; Weinberger* v. *Salfi, supra*).

In contrast, benefits under Title XVI are provided to aged, blind, and disabled individuals whose income and other resources are below prescribed levels. Section 1611 of the Act, 42 U.S.C. (Supp. V) 1382. Thus, unlike the secondary benefits provisions of Title II, Title XVI is designed explicitly to allocate assistance on the basis of individualized determinations of need.

Congress intended that the supplemental security income program and other general assistance programs established under the Social Security Act would work in tandem with the insurance provisions of Title II. Whereas the latter provisions extend coverage to the wage earner and his family without regard to need, the former programs provide benefits on the basis of actual need to individuals who "[have] unusual needs, or * * * who [are] in need for reasons not covered by the insurance program, or * * * who for one reason or another [are] unable to earn insurance rights through work." Recommendations for Social Security Legislation, Report of the Advisory Council on Social Security, S. Doc. No. 208, 80th Cong., 2d Sess. 95 (1948); see H.R. Rep. No. 1300, 81st Cong., 1st Sess. 53-54 (1949). Congress intended that the general assistance programs would "serve the function of filling the gaps left by the social insurance program * * *." H.R. Rep. No. 1189, 84th Cong., 1st Sess. 4 (1955).

Congress' intention has been realized in this case. Appellee's child's insurance benefits under Title II

were discontinued, because he could fairly be presumed to have left the wage earner's "family as a unit," yet he remained needy "for reasons not covered by the insurance program." Because he remained needy, he became entitled to supplemental security income under Title XVI. Indeed, the income appellee and his wife receive under that Title is only marignally less than they would have received had appellee's child's insurance benefits been continued. Thus the mere fact that appellee remained needy after his marriage is not a constitutionally sufficient reason for requiring Congress to continue his child's insurance benefits. Congress has responded to and provided for the needs of appellee and other similarly situated individuals in a different but entirely reasonable manner.

B. The Narrow Exception for Disabled Children who Marry Individuals Entitled to Insurance Benefits Under the Act also is Rational

Congress has provided disabled children with a limited exception to the general rule that marriage causes a termination of child's insurance benefits. See Sections 202(d)(5) and 202(s)(2). That exception was enacted in 1958 as part of a set of amendments providing for continuation of most secondary benefits when the beneficiary marries an individual who also is entitled to insurance benefits under the Act. 72 Stat. 1030.[4] Under Section 202(d)(5), the

[4] Several other secondary insurance benefits, in addition to child's insurance benefits, require as a condition of eligibility that the beneficiary be unmarried (or an unremarried widow, widower, or divorcee). See Sections 202(b)(1)(C) (divorced wives), 202(e)(1)(A) (widows), 202(f)(1)(A) (widowers), and 202(g)(1)(A) (surviving or divorced mothers). Generally speaking, those benefits are terminated when the beneficiary marries or remarries. See Sections 202(b)(1)(H), 202(e)(1), 202(f)(1), and 202(g)(1). See also Section 202(h)(1)(C) (parents). But see Sections 202(e)(4) and 202(f)(5). For each of these benefit categories, however, there is a limited exception in favor of beneficiaries who marry individuals who themselves are beneficiaries under the Act. In addition to the statutory provision involved in this case, Section 202(d)(5), see Sections 202(b)(3), 202(e)(3), 202(f)(4), 202(g)(3), and 202(h)(4).

child's insurance benefits of a disabled beneficiary are continued upon his marriage to a person entitled to old age, divorced wife's, widow's, widower's, mother's, or parent's insurance benefits, or to another disabled beneficiary of child's insurance benefits. This exception to the general rule that benefits terminate upon marriage is rational, and the Due Process Clause does not require that it be further extended to cover appellee's case.

The principal purpose of the 1958 amendments is explained in the legislative history (*e.g.*, H.R. Rep. No. 2288, 85th Cong., 2d Sess. 18 (1958)):

> When a secondary beneficiary marries, such person's benefit is terminated under present law. * * * [I]f the new spouse is also receiving a secondary benefit, the benefits of both are terminated and ordinarily neither beneficiary can become entitled to any new benefits. Your committee's bill would eliminate the hardship in these cases by providing that marriage would not terminate a benefit where a person receiving

> mother's, widow's, widower's, parent's or childhood disability benefits marries a person receiving any of these benefits * * *.

This explanation confirms what is apparent from the statutory language: in enacting a limited exception to the general eligibility bar, Congress was concerned only with the consequences under the Act of a marriage between two social security insurance beneficiaries. Congress reasonably determined that a marriage between individuals both receiving insurance benefits under the Act ordinarily would not result in the elimination of or reduction in their respective needs. Such individuals could reasonably be expected generally to have no substantial source of support beyond their insurance benefits and to be unable to work because of disability, age, or family responsibilities. Yet under the Act before 1958, marriage of these individuals to one another caused a simultaneous termination of secondary benefits. The 1958 amendments to the Act, including the provision in question here, were intended to eliminate this particular form of hardship.[8] The limited congressional objective was to cure what was perceived

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[8] Congress also provided in Section 202(d)(5) for the continuation of child's benefits when the disabled beneficiary marries a person receiving old-age or disability benefits. See also Section 202(g)(3) (mother's benefits). Since both spouses in such a marriage could be presumed to be dependent upon social security insurance benefits for support, Congress amended the Act to prevent the substantial reduction in benefits that would otherwise result from the marriage.

to be a defect in the internal workings of the insurance benefit provisions.

The rationale of the 1958 amendments does not extend to appellee's case. Since appellee did not marry another social security insurance beneficiary, his new family was not presumptively dependent upon primary or secondary insurance benefits for support. To the extent appellee in fact remained needy, his need was not occasioned by the limited circumstances that Congress sought to remedy.

Congress was not required to continue appellee's child's insurance benefits after marriage merely because it has chosen to continue certain other persons' benefits. In the areas of economic and social welfare legislation, Congress is constitutionally empowered to deal with a problem "one step at a time" and to address "the phase of the problem which seems most acute * * *." *Williamson* v. *Lee Optical Co.*, *supra*, 348 U.S. at 489. That is what Congress has done here. The 1958 amendments to the Act represent a "[g]overnmental decision[] to spend money to improve the general public welfare in one way and not another," and the question of the validity of such decisions is "not confided to the courts * * * unless the choice is clearly wrong, a display of arbitrary power, not an exercise in judgment.'" *Mathews v. de Castro*, *supra* (slip op. 4, quoting from *Helvering* v. *Davis*, 301 U.S. 619, 640).

Congress' choice in this regard was not arbitrary; there was a sound basis for its decision to limit the exception to the marriage bar to marriages between

social security insurance beneficiaries. The marriage between such beneficiaries presents a readily identifiable situation that Congress could easily treat within the Act's existing benefit structure. No substantial alteration of the insurance provisions or of the method of allocating insurance benefits was required in order to solve the particular problem presented by such marriages.

Other marriages, however, present a substantially different problem. Within the narrow frame of reference provided by the social security insurance program, there is no way to identify those marriages in which the beneficiary's need for support will continue. If Congress sought to identify and meet specific instances of continued need, it would be required to abandon the existing method of allocating benefits on the basis of broad and easily applied presumptions, in favor of an individualized means test similar to that used for the allocation of welfare benefits.[6]

Such a change would work a drastic alteration in the fundamental character of Title II, for until now

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[6] Alternatively, it could determine need by utilizing, for example, the presumption that a beneficiary's marriage to a welfare recipient affords no occasion for a termination of benefits. But such an approach would entail a far more detailed inquiry into continuing, month-by-month eligibility than is now necessary under the insurance benefits program. Moreover, even this would work an alteration in the fundamental character of Title II, which, "unlike the public assistance provisions, [is] not need based" (*Mathews* v. *de Castro, supra* (slip op. 5-6 n. 6)).

those provisions have "not purport[ed] to be general public assistance laws that simply pay money to those who need it most." *Mathews* v. *de Castro, supra* (slip op. 5). Congress has now enacted, in Title XVI of the Social Security Act, a supplemental security income program that allocates benefits on the basis of individualized determinations and thereby takes up the burden of providing federal assistance where Title II leaves off (see pp. 19-22, *supra*). The Constitution does not require that Title II itself be restructured along the lines of a general public assistance program. See, *e.g.*, *Mathews* v. *de Castro, supra; Mathews* v. *Lucas, supra; Weinberger* v. *Salfi, supra.*

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-860

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION, AND WELFARE,

Appellant,

v.

JOHN A. JOBST,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

BRIEF FOR THE APPELLEE

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IN THE

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OCTOBER TERM, 1976

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JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION, AND WELFARE,

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Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

BRIEF FOR THE APPELLEE

OPINIONS BELOW

The opinion of the district court on remand (J.S. App. A, pp. 1a-4a) is not reported. The earlier opinion of the district court (J.S. App. B, pp. 5a-17a) is reported at 368 F. Supp. 909.

JURISDICTION

The judgment of the district court, reinstating the earlier judgment declaring Sections 202(d)(1)(D) and 202(d)(5) of the Social Security Act unconstitutional as applied to appellee, was entered on July 27, 1976 (J.S. App. E, p. 23a). A notice of appeal to this Court was filed on August 24, 1976 (J.S. App. C, pp. 18a-19a). On October 13, 1976, Mr. Justice Blackmun extended the time for docketing the appeal to and including November 22, 1976, and on November 15, 1976, he further extended the time to and including December 22, 1976. The jurisdictional statement was filed on the latter date, and probable jurisdiction was noted on February 22, 1977 (App. 17).

QUESTION PRESENTED

Whether Sections 202(d)(1)(D), 202(d)(5), and 202(s)(2) of the Social Security Act, which provides that secondary social security benefits received by a disabled dependent child of an insured wage earner shall terminate when the child marries and individual who is not entitled to benefits under the Act, are consistent with the Due Process Clause of the Fifth Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall be • • • deprived of • • • property without due process of law • • •.

Section 202 of the Social Security Act, 49 Stat. 623, as amended, 42 U.S.C. (and Supp. V) 402, provides in pertinent part:

> (d)(1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits or of an individual who dies a fully or currently insured individual, if such child–
>
> (A) has filed application for child's insurance benefits,
>
> (B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time student and had not attained the age of 22, or (ii) is under a disability (as defined in section 423(d) of this title) which began before he attained the age of 22, and
>
> (C) was dependent upon such individual–
>
> • • • • •
>
> shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and ending with the month preceding whichever of the following first occurs–
>
> (D) the month in which such child dies or marries,
>
> • • • • •
>
> (5) In the case of a child who has attained the age of eighteen and who marries–
>
> (A) an individual entitled to benefits under subsection (a), (b), (e), (f), (g), or (h) of this section or under section 423(a) of this title, or
>
> (B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection, such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage; • • •.
>
> • • • • •
>
> (s)(2) • • • [S]o much of subsection[ ] • • • (d)(5) • • • of this section as precedes the semicolon, shall not apply in the case of any child unless such child, at the time of the marriage referred to therein, was under a disability • • •.

STATEMENT OF THE CASE

I.

On November 28, 1956, John A. Jobst, under authority of 42 U.S.C. §402(d), filed an application for child's insurance benefits based on the earnings record of his father (Tr. 56-58).[1] Plaintiff was awarded benefits by the Social Security Administration to commence January, 1957, on the basis that he had been disabled since birth because of cerebral palsy (Tr. 61).

In October, 1970, Jobst advised the Social Security Administration that he had married Sandra Lee on October 2, 1970 (Tr. 59). Sandra Lee also has cerebral palsy and is permanently and totally disabled (Tr. 36). Sandra Lee was receiving welfare assistance from the Division of Welfare of the State of Missouri but was not entitled to receipt of social security benefits (Tr. 36, 37).

Plaintiff's benefits were terminated as of October, 1970, because of his marriage (Tr. 63). In terminating Jobst's insurance payments the Secretary relied on §202(d) of the Social Security Act, 49 Stat. 623, as amended, 42 U.S.C. (and Supp. V) 402(d), as requiring termination of child's insurance payments upon the child's marriage unless the child's spouse is also entitled to social security insurance payments.

Following the Secretary's termination of Jobst's Federal insurance payments, Jobst of necessity applied for and received welfare benefits (partial and total disability) (Appx. 12, para. 2). As of January 1, 1974, Jobst began receiving Federal welfare payments under the Supplemental Security Income program authorized by Congress in 42 U.S.C. (Supp. II, 1972), §1381 *et seq.*, . . ." As of November 1, 1975, Jobst's aggregate Federal insurance benefits would have

[1] "Tr." refers to the record of proceedings before the Social Security Administration relating to the claim of John Jobst for child's insurance benefits.

exceeded his total welfare payments by $5,901.60. (Appx. 15, Para. 23).

II.

As a result of the Secretary's termination of Jobst's child insurance payments, he requested a hearing which was held on September 7, 1971 (Tr. 32, 33-45). The administrative Law Judge reversed the Social Security Administration's initial determination on the basis that "termination on the basis of marriage is arbitrary and without any rational basis, and, therefore, violates the equal protection and due process clauses of the Constitution." (Tr. 27).

On its own motion the appeals council reviewed the hearing examiner's decision and on June 22, 1972, reversed the Administrative Law Judge's ruling on the basis that a "quasi-judicial federal administrative agency" cannot consider the constitutionality of federal statutes in administering the Social Security Act (Tr. 7).

Plaintiff thereafter commenced this action in United States District Court for the Western District of Missouri to review the Secretary's termination of his benefits. On January 14, 1974, the district court concluded "that 42 U.S.C. §402(d)(1)(D) and §402(d)(5) are violative of principles of equal protection as incorporated in the Fifth Amendment to the Constitution as applied to a beneficiary who marries a totally disabled person who does not likewise receive child's insurance benefits." (J.S. App. A, p. 16a).

The basis of the district court's opinion was that the statute created a constitutionally prohibited "distinction between beneficiaries who marry disabled persons who do receive benefits and beneficiaries who marry disabled persons who do not receive benefits." (J.S. App. B, p. 13a). This discrimination was held to be antithetical to the purpose of secondary benefits in that it effected denial to a beneficiary "who marries a person who cannot provide a source of

support to the beneficiary." (J.S. App. B, p. 14a). The court further held that the constitutionality of the statute could not be sustained on the basis that marriage was a reasonable terminating event under the principal classification intended by Congress–between beneficiaries who marry persons who are entitled to benefits and those who marry persons not entitled to benefits. (J.S. App. B, p. 14a). This was the case because the statutory language created a second classification–that of plaintiff Jobst–which cannot be based upon a rational basis since it was totally unrelated to the dependence of the child insurance recipient on the deceased wage earner.

III.

The Secretary appealed directly to this Court (No. 73-1758). The Secretary argued that Supplemental Security Income for the Aged, Blind and Disabled, Title XVI of the Social Security Act, as added by the Social Security Amendments of 1972, 86 Stat. 1329, 42 U.S.C. Supp. V 1381 et seq., was an intervening legislative pronouncement on the basis of which the district court misinterpreted the purposes of child's insurance benefits under 42 U.S.C. §402(d). This issue was never raised before the lower court (J.S. App. A, p. 2a). On October 15, 1974, this Court vacated the judgment of the district court and remanded the case for reconsideration in light of the Supplemental Security Income program. 419 U.S. 811-812.

Plaintiff and his wife, Sandra, separated in December of 1975 (Appx. 16, Para. 26), following remand of this case to the lower court. As of April, 1977, Jobst was receiving $118.30 per month in Federal welfare benefits (Appx. 13, para. 11). In the event he had continued receipt of child's insurance payments, he would have been entitled to a monthly payment of $183.60 (Appx. 13, para. 13). Jobst and

his wife decided in December of 1976 to dissolve their marriage.[3]

On remand, the district court found and concluded "that all action taken by the Secretary in this case was taken before the effective date of the supplemental security income legislation and that, as was the Secretary's position before this Court at all times until remand, 42 U.S.C. §§1381, *et seq.*, simply had nothing to do with the questions presented (J.S. App. A, p. 3a). The Court entertained the view that the accidental application of SSI payments based on a program enacted subsequent to the child's insurance program simply did not "shed any light on the old Act which would require a reversal of its earlier decision." (J.S. App. A, p. 4a).

INTRODUCTION AND SUMMARY OF ARGUMENT

I.

Under §202(d) of the Social Security Act, the disabled child of an eligible wage earner loses entitlement to child's insurance payments upon marriage unless the disabled child recipient marries an individual who also is eligible for federal insurance payments. Section 202(d) places disabled child's insurance recipients in two classes: (1) those who marry disabled persons also receiving social security benefits, and (2) those who marry non-entitled totally disabled persons. The second class loses its insurance payments without regard to their continuing dependence on the deceased or retired wage earner. This invidious discrimination was held to be constitutionally prohibited as having no rational basis as between the statutory classifications established and the

[3] "Affidavit in Support of Motion to File Motion to Dismiss or Affirm in the Supreme Court of the United States In Forma Pauperis," para. 5.

likelihood of dependency of the disabled child recipient on the insured worker (J.S. App. B, p. 139).

The district court determined that these classifications were "utterly lacking in rational justification," under the current constitutional standards established by this Court in *Flemming v. Nestor*, 363 U.S. at 611. Plaintiff maintains these findings of the lower court should be affirmed as consistent with the teachings of this Court that the permissibility of invidiously discriminatory classifications must be measured against the *actual* Congressional purpose in enacting the concerned insurance scheme. *Mathews v. Lucas*, ____ U.S. ____, 49 L.Ed.2d 651 (1976); *Weinberger v. Wiesenfield*, 420 U.S. 636, 648 n. 16, and 655; *Jiminez v. Weinberger*, 417 U.S. 628, 634-35 (1974).

The Secretary postulates two major explanations for this discrimination between subclasses under the statute. He urges the classifications created are permissible because marriage as a terminating event for social security payments is consistent with the statutory base. Secondly, it is suggested that Congress in amending §202(d) in 1958, departed from the central purpose of the Social Security Act and property intended only to provide for the social welfare needs of disabled, eligible recipients who marry other eligible recipients.[2a]

These explanations, however, are unrelated to the relevant question presented–that being the impact of the classifications on the dependency of Jobst on the insured wage earner. Congress recognized the inapplicability of marriage as a terminating event as to disabled child recipients who marry other disabled persons receiving federal insurance payments, in 1958. Congress presumptively excluded a subclass of beneficiaries simply because their disabled spouse is not eligible for

[2a] Congress limited the application of the 1958 amendment to disabled child recipients. Congress thereby recognized that dependency of disabled children may be unaffected by marriage. *cf.* 72 Stat. 1030; §§202(d)(1)(D), 202(d)(5) and 202(5)(2) of the Social Security Act.

payments under the Act. Recognition by the Secretary that marriage of a child recipient may normally be a rational terminating event, ignores the impact of the classification created on *disabled* child recipients who likewise have the same continuing dependency on the insured or deceased wage earner.

Congress in 1958 excepted marriage between recipients as a terminating event in part for the purpose of eliminating "the hardship in these cases by providing that marriage would not terminate a person receiving . . . [disability] benefits [when he] marries a person receiving any of these benefits. * * *"[3] Jobst's continuing hardship upon his marriage emanates from the identical base–continuing dependency on the insured wage earner–and in turn insures the proscription of the Fifth Amendment to the classifications created.

The statute's legislative history confirms that the district court correctly concluded the actual and express purpose of Congress in provision of child's disability insurance payments was to benefit both that child and his wage-earning parents by providing a measure of income and security for eligible disabled children who remain dependent on their deceased, disabled or retired parent.[4] Plaintiff relies on the holding of this court in *Mathews v. DeCastro*, ____ U.S. ____, 50 L.Ed. 389, 394 (1976): "The primary objective of the Social Security Act was to provide *workers and their families* with basic protection against hardship created by the loss of earnings due to illness or old age." The child's insurance benefits program, "unlike the public assistance provisions [referring to child's disability benefits as compared to supplemental security income] was not need based and instead was designed to protect against the specific economic hardships created by involuntary, premature retirement." *Id.* at 394, fn. 6 (citations omitted). "[T]he focus of the Social Security Act was specifically on 'adequate protection for [the husband's] family.'" *Id.* at 395.

[3] H.R. Rep. No. 2288, 85th Cong., 2d Sess., p. 18 (1958).

[4] See *infra*, p. 16, 17-19.

Plaintiff also maintains that the decision of the District Court should be affirmed on the basis that Congress established permanent irrebutable presumptions totally at odds with the express congressional purpose of §402(d). Congress thereby made irrelevant Jobst's continuing receipt of child's insurance benefits to his remaining dependency on his father upon his marriage to a person who is herself disabled in a manner precluding support for Jobst.

This discrimination cannot be justified on the basis of a permissible administrative aid promulgated by Congress in order to avoid spurious claims. Plaintiff does not question the propriety of such prophylactic measures as established in *Weinberger v. Salfi*, 422 U.S. 749 (1975). It is instead clear as to the child's insurance program that Congress was unconcerned in provision for child insurance benefits with administrative convenience or avoidance of spurious claims. This is clear from the legislative history wherein it is stated that "[D]etermination of disability generally would not be difficult because of the few cases involved. Most of the cases would be the result of congenital conditions or conditions existing since early childhood, including mental deficiency."[5]

The secretary cannot sustain §402(d) on the basis of such a permissible presumption simply because the classifications are impermissible under the standard set in *Weinberger v. Salfi, supra*. The appropriateness of determination of Jobst's termination must be judged on the basis of "the materiality of the relationship between the statutory classifications and the likelihood of dependency they assertedly affect [which] need not be 'scientifically substantiated.'" *Id.* at 663. This conclusive denial to Jobst of any opportunity to establish the existence of continuing disability is especially pernicious and actually does disservice to the purposes of the child's disability statute. Cf. *Mathews v. Lucas*, ____ U.S. ____, 49 L.Ed.2d 651 (1976), with *Jiminez v. Weinberger*, 417 U.S. 628, 635 (1974); and *Weinberger v. Wiesenfield*, 420 U.S. 636 (1975).

[5]S. Rep. No. 2133 (June 5, 1956); U.S. Code, Cong. and Adm. News, 1956, p. 3878.

II.

Plaintiff secondly maintains that this Court should affirm the decision of the district court that "the enactment of the Supplemental Security Income program in 42 U.S.C. §§1381, et seq., does not relate to the purposes supporting the congressional enactment of the Child's Insurance Benefits Program, as originally enacted in 42 U.S.C. §402(d)." (U.S. App. B, pp. 3a) The Secretary cannot insist that this Court consider the congressional purpose of child's disability payments "in tandem" with the welfare-based Supplemental Security Income program because to do so would be inconsistent with accepted rules of statutory construction and the respective congressional bases of the programs concerned. In enacting the child's insurance scheme, and the Supplemental Security Income program in 1972, Congress cannot be considered to have proceeded a step at a time in provision for benefits to child's insurance recipients.

The lower court correctly determined the meaning of the statute, seeking always to accomplish its underlying purpose, in accordance with the directives of this Court. *Saltwater Proj. Agr. Dist. v. F.P.C.*, 391 F.2d 470, 474 (D.C. Cir. 1968), cert. denied sub nom, *Ark. Valley G&T, Inc. v. FDC*, 303 U.S. 857 (1969). The enactment of Supplemental Security Income more than a decade following establishment of the child's insurance benefit program manifests the inappropriateness of relating the congressional history of the one insurance scheme to that of the later federal welfare program. *United States v. Southwest Cable Co.*, 392 U.S. 157, 170 (1968), *Fletcher v. Housing Authority of Louisville*, 525 F.2d 532 (6th Cir. 1975).

Plaintiff also demonstrates that there simply is no constitutional relationship as between the congressional purposes of §202(d) and 42 U.S.C. §§1381 et seq. In codifying Supplemental Security Income, Congress intended only to replace "existing federally-aided public assistance programs by new Federal programs for needy families and for

needy aged, blind, or disabled persons."[6] The program Congress chose to utilize remains "need" based, and is antithetical in purpose and intent to the child's insurance payments program. Secondary benefits, on the other hand, were provided so the dependents of American workers could *avoid* the "humiliation" of this same test of need which is central to the purposes of the Supplemental Security Income program.[7]

Nor can the Secretary sustain these classifications on the related basis that they are "not made with mathematical nicety or because in practice it results in some inequality." *Dandridge v. Williams,* 397 U.S. 471, 485 (1970). This argument ignores the concomitant constitutional requirement that the classification have some "reasonable basis." *Id.*

Congress can address a problem one step at a time only "so long as this judgment is rational, and not invidious . . ." *Jefferson v. Hackney,* 406 U.S. 536, 546 (1972). The Secretary must thus show that Jobst's termination is related to his dependency upon his father's earnings. The Secretary cannot and has not demonstrated that the classifications created have any rational basis in terms of Jobst's continuing dependency. The Secretary has instead impliedly conceded Jobst's dependency remains unaltered as a result of his marriage.

The invidious discrimination as between statutory classifications is particularly apparent upon comparison of the Secretary's arguments for rationality of the classifications here to recent decisions of this Court where other discriminatory classifications were demonstrated to relate to likelihood of dependency of the recipient. See *Mathews v. DeCastro,* ____ U.S. ____, 50 L.Ed.2d 389 (1976), *Mathews v. Lucas,* ____ U.S. ____, 49 L.Ed.2d 651 (1976), *Weinberger v. Salfi,* 422

[6]H. Rep. No. 92-231 (May 26, 1971); U.S. Code Cong. & Adm. News, 1972, at 4990.

[7]S. Rep. No. 1669 (May 17, 1950); U.S. Code Cong. & Adm. News, 1950, Vol. II, p. 3288.

U.S. 749 (1975). In these cases the Court held that the constitutional validity of such classifications must be determined by whether there is a rational basis for the difference in the treatment to be accorded to the persons placed in the two classes by the statute or regulation. This is quite a different thing than suggesting that Congress here decided to proceed one step at a time in providing social security benefits to disabled child recipients remaining dependent on the insured worker.

The discrimination as to Jobst resulting from the congressional classifications established is demonstrated by citing substantial existing differences in the statutory and regulatory schemes provided for the two programs. For example, at the time of remand of the case to the district court, the Social Security Administration would have then owed Jobst at least $5,000.00 in back benefits. The Secretary's argument also ignores avoidance of "humiliation" associated with receipt of welfare benefits and perverts the true purpose of the child's insurance program to assure the financial security of a dependent who remains in need of the insured benefits of the worker, regardless of his marriage to another disabled person.

As correctly determined by the district court, the Secretary's argument must fail because Congress cannot ignore the Congressional purpose of the child's insurance benefit program in establishing these classifications. The Secretary's argument must fail because it ignores divergent congressional purposes as between the child's insurance and supplemental security income programs. Social security is intended to provide security for the insured worker and his family, not satisfaction of the needs of welfare recipients as is the case with supplemental security income.

ARGUMENT

I.

THE DISTRICT COURT DID NOT ERR IN HOLDING THAT SECTIONS 202(d)(1)(D) AND 202(d)(5) OF THE SOCIAL SECURITY ACT ARE UNCONSTITUTIONAL AS APPLIED TO CHILD'S INSURANCE RECIPIENTS WHO MARRY OTHER TOTALLY DISABLED PERSONS NOT RECEIVING SOCIAL SECURITY BENEFITS.

The district court held unconstitutional "42 U.S.C. §402(d)(1)(D) and §402(d)(5) as applied to child's insurance beneficiaries who marry *totally* disabled persons who do not receive child's insurance benefits." (J.S. App. B, p. 16a.) Those sections were held to violate the Fifth Amendment on the basis of unjustified arbitrary discrimination between two classes of recipients who marry disabled persons. This invidious discrimination was held to be constitutionally prohibited as having no rational relationship to the dependency of the deceased wage earner under the statutory basis of the Social Security Act. (J.S. App. B, p. 13a).

The lower court concluded it is patently arbitrary discrimination to single out only one subclass who marry persons qualified by the Act as eligible for continued receipt of social security payments without regard to the continuing need of the beneficiary on the earnings of the deceased:

> No rational basis for such a distinction has been suggested nor, we conclude, does one exist. The distinction between the two classes of beneficiaries has absolutely no relevance to the purpose for which the general classifications in the statute were drawn. Indeed, the statutory distinctions are antithetical to that purpose; they result in situations similar to the one here, in which benefits are denied to a beneficiary who marries a person who cannot provide a source of support to the beneficiary. (J.D. App. B, pp. 13a, 14a.)

It is clear from the above that the District Court compared the resulting discrimination between subclasses of beneficiaries to the central legislative purpose of the Social Security Act; that of the relative likelihood of the dependency of the recipient on the deceased wage earner. Moreover, the lower court correctly considered whether a rational basis for the discriminatory classification was demonstrated under the standard established by this Court in *Richardson v. Belcher*, 404 U.S. 78, 81 (1971):

> To characterize an act of Congress as conferring a "public benefit" does not of course, immunize it from scrutiny under the Fifth Amendment. We have held that "the interest of covered employee under the [Social Security] Act is of sufficient substance to fall within the protection from arbitrary governmental action afforded by the Due Process Clause." (Citation omitted.)

The Due Process Clause was held "to interpose a bar," on manifestly, "patently arbitrary classification[s], utterly lacking in rational justification." *Flemming v. Nestor*, 363 U.S. 603 (1969) See also *Weinberger v. Salfi*, 422 U.S. 749 (1975) (J.S. App. B, p. 10a).

These findings of the lower court should be affirmed as consistent with the teachings of this Court that the permissibility of invidiously discriminatory classifications must be measured against the *actual* Congressional purpose in enacting the concerned insurance scheme. *Mathews v. Lucas*, ____ U.S. ____, 49 L.Ed.2d 651, 662 n. 14 (1976); *Weinberger v. Wiesenfield*, 420 U.S. 636, 648 n. 16, and 655; *Jiminez v. Weinberger*, 417 U.S. 628, 634-35 (1974); cf. *Stanton v. Stanton*, 421 U.S. 7, 14 (1975). When measured against the express purpose in enacting the child's disability insurance scheme, i.e., to afford financial security for persons who have been totally disabled since childhood and who have lost the support of their deceased-insured wage earning parent upon whom they depended, it is manifest that the district Court correctly concluded that the challenged provisions are utterly irrational, overbroad assumptions without justification.

An examination of the legislative history of §202(d) of the Social Security Act discloses the district court correctly understood the purpose of Congress in enacting this scheme of child's insurance benefits. Congress enacted this insurance program for the purpose of providing a measure of income and security for persons continuously disabled since childhood who remain dependent on their wage-earner parents but who have lost that support through the parents' death, disability, or retirement.[8] Correspondingly, Congress was also concerned with assuring insured wage earners that disabled children would be adequately cared for even in the event of the wage earner's loss of income resulting from death, disability or retirement.

The purpose of social security insurance is "to protect workers and their dependents from the risk of loss of income due to the insured's old age, death or disability." *Delmo v. Celebrezze*, 347 F.2d 159, 161 (9th Cir. 1965).[9] Insurance payments were extended to children by §202(d) "to provide at least some measure of income and security to those who have lost a wage earner on whom they depended." *Davis v. Richardson*, 342 F. Supp. 588, 593 (D. Conn. 1972).

It is unalterably clear from the comments of the Senate Finance Committee considering §202(d) in 1956, that the purpose of Congress in enacting the child's insurance program was provision of security for the child remaining dependent on the insured wage earner because of disability:

> The bill includes a provision for payment of disabled child's benefits to the dependent disabled child of a deceased or retired insured worker if the child is permanently and totally disabled and has been so since before he reached age 18. Such children are as dependent on their parents after attaining age 18 as before and therefore the Committee believes it is important to fill this gap in the program by providing benefits for disabled children.[10]

[8] See *infra* at 16, 17-19.

[9] S. Rep. No. 1669, 1950 U.S. Code Cong. & Adm. News, p. 3288.

[10] S. Rep. No. 2133 (June 5, 1956); U.S. Code Cong. & Adm. News, 1956, p. 3878.

Congress also sought to reassure the insured worker that his dependent disabled children would receive insurance benefits in the event of the worker's death, disability or retirement:

> Your Committee recognizes the situation faced by people who have the care of a child who because of a mental deficiency never grows up, or who because of a physical impairment requires constant care throughout his life. The suffering of these parents is the more acute because they are constantly concerned about what will happen to the child when the usual family income is cut off by the death or retirement of the wage earner. Under present law, when the father qualifies for monthly benefits upon retirement at age 65 or later, his child can get a benefit equal to one-half of the father's benefit provided the child is under 18. The mother also gets a benefit. Benefits are also payable to the mother and young child when the father dies. In either case, however, benefits which the present law provides for a child stop when he reaches 18, regardless of whether the child continues to be dependent because of mental or physical incapacity. And a child who is over 18 when his father retires or dies cannot get benefits at all.[11]

These purposes of Congress in enacting the child insurance scheme are free from ambiguity. There are no contradictions or *cul de sacs*. Instead Congress provided a child's insurance scheme furthering the purpose of the Social Security program of providing some measure of financial security for insured wage earners and their dependents. This purpose is consistent with and a mere restatement of the underlying Congressional purpose of all social security benefits:

> The purpose of the social security program is to provide a continuing income for a worker and his family when the worker's earnings are cut off by his retirement, old-age, disability, or his death.[12]

In 1965, when Congress extended child's insurance benefits to full-time students up to age 22 who remained dependent

[11] S. Rep. No. 2133 (June 5, 1956); U.S. Code Cong. & Adm. News, 1956, p. 3881.

[12] Report of the 1971 Advisory Council on Social Security, H. Doc. 92-80, 92nd Cong., 1st Sess., p. 22 (April 1, 1971).

on a deceased, disabled or retired parent wage earner, the Senate Report reaffirmed the identical statutory purpose:

> Under present law a child beneficiary is considered dependent, and is paid benefits, until he reaches age 18, or after that age if he was disabled before age 18 and is still disabled. The Committee believes that a child over 18 who is attending school full time is dependent just as a child under 18 or a disabled older child is dependent, and that it is not realistic to stop such a child's benefits at age 18. A child who cannot look to a father for support (because the father has died, is disabled, or is retired) is at a disadvantage in completing his education as compared with a child who can look to his father for support.[13]

The purpose of extending these benefits to such children attending college was clearly recognition of their continuing dependence on the insured wage earner, regardless of their age and regardless of their need for payments. Again in 1972, Congress further amended §202(d) inter alia to permit the payment of child's disability benefits when the child's continuous disability has begun before age 22, rather than before age 18. The lack of relationship between the dependency of the child recipient and his age as a terminating event, again was the purpose of Congress in extending these benefits:

> People under age 22 become so seriously disabled that they are prevented from working and generally depend on their parents for their future support. Your Committee believes that it is appropriate and desirable to provide social security benefits for these disabled people after the insured parent dies, becomes disabled or retires.
>
> * * *
>
> Your Committee believes that the present provisions do not provide sufficient protection for many children. There are a significant number of children whose parents are deceased and who are cared for and supported by a

[13]S. Rep. No. 404 (June 30, 1965); U.S. Code Cong. & Adm. News, 1965, p. 2036-2037.

> grandparent. It seems reasonable and equitable to provide benefits for a child in such cases when his grandparent retires, becomes disabled or dies. Your Committee has included in its bill a provision that would accomplish this objective.[14]

That same exclusive congressional purpose behind the child's disability insurance scheme is further reflected in earlier amendments partially removing termination of social security payments upon adoption of such children by relatives and others without termination or reduction of insurance payments. Congress took this action specifically because the adoption was unrelated to the dependency of the child on the deceased wage earner:

> Such adoptions are usually undertaken for the purpose of securing the child the legal and psychological advantages of adoption within a close family group . . . Adoption by such relatives seldom changes the financial conditions under which the child is then living and the prospective loss of benefits as a result of adoption will deter a relative from adopting the child.[15]

It is inescapably clear from this relevant legislative history and the statutory scheme itself that the lower court correctly concluded that the actual and express purpose of Congress in provision of child's disability insurance benefits was to benefit both that child and his wage-earning parents by providing a measure of income and security for children continuously disabled since childhood who are dependent upon their wage-earning parents but have lost that financial support through the parents' death, disability or retirement. As stated by this Court, "the primary objective of the Social Security Act was to provide *workers and their families* with basic protection against hardship created by the loss of earnings due to illness or old age." *Mathews v. DeCastro*, ____ U.S. ____,

[14]H. Rep. No. 92-231 (May 26, 1971); U.S. Code Cong. & Adm. News, 1972, pp. 5037, 5040.

[15]S. Rep. No. 1862 (July 27, 1946); U.S. Code Cong. & Adm. News, 1946, p. 1540.

50 L.Ed.2d 389 (1976). "Again, the insurance program, unlike the public assistance provisions [referring to child's disability benefits as compared to supplemental security income] was not need based and instead was designed to protect against the specific economic hardships created by involuntary, premature retirement." *Id.* at 394, fn. 6.[16] "[T]he focus of the Social Security Act was specifically on adequate protection for [the husband's] family.' " *Id.* at 395.

It is in light of this actual and express purpose of Congress that the constitutional validity of the challenged provisions were determined by the lower court. (J.S. App. B, p. 13a.) The lower court concluded that the discriminatory treatment of subclasses of eligible recipients under the statute concerned, when measured against the central purpose of Congress, was a patently overbroad and arbitrary classification lacking in rational justification.[17]

The Secretary postulates two alternative explanations for the discrimination between subclasses under the statute. He urges the classifications created are permissible because marriage as a terminating event for social security payments is consistent with the statutory base. Secondly, it is suggested that Congress departed from the central purpose of the Social Security Act in 1958, and properly intended only to provide for the social welfare needs of those recipients who marry other disabled recipients under the Act.

[16]Referring to H.R. Rep. No. 1300, 81st Cong., 1st Sess., C.S.S. 27-28, 53-54 (1949).

[17]The challenged provisions discriminate not only against the child's disability benefits recipient who is in the circumstances of John Jobst, but against the child's wage-earning parent as well. By force of the arbitrary and discriminatory provision, the insured worker loses the assurance that in the event of his own death, disability or retirement his disabled child will be cared for, notwithstanding that it was for that very purpose that over the years social security taxes were deducted from his salary. Cf. *Weinberger v. Wiesenfield,* 420 U.S. 636, 645 and 654-55 (concurring opinion) (1975).

These explanations postulated for the discrimination are unrelated to the relevant question presented–that being the impact of the statutory classifications on the dependency of Jobst on the insured wage earner. As a general premise the Secretary undoubtedly correctly concludes it is reasonable to terminate social security payments to child beneficiaries in the event of marriage. The application however, of that proposition to *disabled* child recipients was removed by Congress in 1958, upon recognizing the inapplicability of marriage as a terminating event as to those recipients who marry other disabled persons receiving federal insurance payments.[18] Congress cannot recognize the irrelevancy of such marriages to dependency of the child on the insured wage earner and likewise arbitrarily, presumptively exclude a subclass of beneficiaries simply because their disabled spouse is not eligible for payments under the Act.

Upon enactment of the child insurance benefits scheme in 1956, Congress required that a disabled child claimant demonstrate that he "was dependent upon such individual– . . ." 42 U.S.C. §402(d)(1)(C). Congress extended these benefits to children of insured workers because of their dependency upon the deceased or disabled insured *worker.* It may be true that in 1958 Congress excepted marriage between recipients as a terminating event for the purpose of eliminating "the hardship in these cases by providing that marriage would not terminate a person receiving any of these benefits. * * *"[19] This purpose is of course consistent with

[18]By terminating the child's disability benefits of a recipient like John Jobst when he marries another disabled person who cannot provide him support or even qualify for social security benefits, the challenged provisions arbitrarily interfere with family relations by selectively penalizing a person based upon his marriage choice. Contrast *Mathews v. Lucas,* ____ U.S. ____, 49 L.Ed.2d 651, 660 n. 8 (1976). This Court has repeatedly recognized that such "freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." *Cleveland Board of Education v. LeFleur,* 414 U.S. 632, 639-40 (1974).

[19]H.R. Rep. No. 2288, 85th Cong., 2d Sess., p. 18 (1958).

the central thrust of the Act of providing security for insured workers and their families. It ignores, however, the hardship of Jobst and similarly situated persons who were subject to the identical hardship as any other recipient remaining eligible under §402(d)(1). That hardship emanates from the identical base—continuing dependency on the insured wage earner—and in turn assures the proscription of the Fifth Amendment to the classifications created.

The Secretary cannot suggest there is a rational basis for the discrimination present by suggesting Congress was concerned only with the marriage between recipients who marry other recipients at the time of the 1958 Amendment. Congress did not abruptly decide to establish a "needs" test as to such persons because "a marriage between individuals both receiving benefits under the Act ordinarily would not result in the elimination or reduction of their need."[20] This argument ignores the impact of the discriminatory classifications established on the subclass of eligible recipients who also endure identical hardships because of their continuing, unabated dependency on the wage credits of the insured worker following their marriage to a totally disabled nonrecipient.

Inferentially, Congress also established permanent irrebuttable presumptions totally at odds with the express congressional purpose of child's insurance benefits. Instead of statutory classifications consistent with the above-described congressional purpose of the child's insurance scheme, Congress had made Jobst's continuing entitlement to social security benefits irrelevant to his remaining dependency on his father upon his marriage to a person who is herself disabled in a manner precluding support for Jobst.

The only justification which could be postulated—that of administrative convenience—is clearly not applicable. Congress may properly establish presumptions or other administrative aids for the purpose of administrative convenience so long as

[20]"Brief for the Appellant," p. 24.

the tests have some relevance to dependency. The purpose of such administrative aids is the avoidance of spurious claims. The propriety of such prophylactic measures was established in *Weinberger v. Salfi*, 422 U.S. 749 (1975), where this Court sustained the constitutionality of the nine-month duration-of-relationship requirement of the Social Security Act in light of an emphatically expressed congressional concern for the need of the provision to avoid spurious claims and serve administrative convenience.

The arbitrary exclusion of Jobst does not relate to any such prophylactic measure. In the case of child's insurance benefits Congress has just as emphatically stated that the statutory purpose in provision for child's insurance benefits was unrelated to any question of administrative convenience or avoidance of spurious claims. Congress made clear both that the entitled class of disabled persons is small and that determination of disability as to this class of recipients was not an administrative burden because of the peculiarly severe and apparent nature of the qualifying event as to such recipients:

> The bill includes provision for payment of disabled child's benefits to the dependent disabled child of a deceased or retired insured worker if the child is permanently and totally disabled and has been so since before he reached age 18. Such children are as dependent on their parents after attaining age 18 as before and therefore the committee believes it is important to fill this gap in the program by providing benefits for disabled children. Your committee does not believe that the serious difficulties in providing cash disability benefits for disabled workers, which are discussed below, apply to the provision of benefits for children disabled prior to page 18. *Determination of disability generally would not be difficult because of the few cases involved. Most of the cases would be the result of congenital conditions or conditions existing since early childhood, including mental deficiency.*[21]

[21]S. Rep. No. 2133 (June 5, 1956); U.S. Code Cong. & Adm. News, 1956, p. 3878.

Section 402(d) cannot be justified as a permissible administrative aid comporting with the statutory basis. That section more nearly constitutes a congressionally-imposed statutory presumption of the termination of dependency of a child beneficiary upon marriage to a totally disabled person on the solitary basis of non-receipt of benefits. Cf. *United States Department of Agriculture v. Lula Mae Murry, et al.*, 413 U.S. 508 (1973). Congress cannot utilize such a conclusive presumption where it clearly has determined the statutory basis of such program to relate to the continuing dependency of the child recipient. Congress might properly establish the same presumption as to *childhood* beneficiaries but to relegate a subclass of *disabled childhood* recipients to the vagaries of welfare benefits through a conclusive presumption unrelated to dependency constitutes invidious discrimination.

By operation of the challenged provisions, Jobst, upon his marriage to Sandra, was totally and conclusively denied by the statute any opportunity to avoid termination of his social security payments by showing that he remained dependent upon his deceased father's lost earnings. Further, upon his impending divorce from Sandra, John Jobst is again totally denied by the statute any opportunity to secure restoration of his terminated benefits by showing that he remains dependent upon his deceased father's lost earnings.[22] Such a blanket and conclusive denial to Jobst of any opportunity to establish the existence in his case of the very circumstances which Congress was concerned to provide for is especially pernicious and actually does disservice to the purposes of the child's disability statute. Cf. *Mathews v. Lucas*, ____ U.S. ____, 49 L.Ed.2d 651 (1976), with *Jiminez v. Weinberger*, 417 U.S. 628, 635 (1974); and *Weinberger v. Wiesenfield*, 420 U.S. 636 (1975).

The Secretary cannot sustain §402(d) on the basis of such a permissible presumption simply because these classifications

[22]The Secretary has adopted this construction of the statutory provisions. Social Security Rulings, 67-33, CB 1967, p. 23.

are impermissible under the standards set in *Weinberger v. Salfi, supra.* The appropriateness of determination of Jobst's payments must be judged on the basis of "the materiality of the relationship between the statutory classifications and the likelihood of dependency they assertedly reflect [which] need not be 'scientifically substantiated.'" *Id.* at 663. But as recognized by defendant, termination of Jobst's benefits is unrelated to his dependency on his father's wage credits.

The inability of defendant to postulate justifications for these classifications is apparent upon examination of *Jiminez v. Weinberger*, where an administrative aid relating to the eligibility of illegitimate children for child's insurance benefits was held to violate the Fifth Amendment because it wholly failed to give such children any opportunity to establish their eligibility as children of the disabled claimant. The lower court had sustained the Secretary's argument that the statutory classification was "rationally related to the legitimate governmental interest of avoiding spurious claims." *Id.* at 630. This Court reversed the trial court because the classifications challenged did not relate to the *dependency* of illegitimate and legitimate children otherwise eligible for insurance benefits:

> Even if children might rationally be classified on the basis of whether they are dependent upon their disabled parent, the Act's definition of these two subclasses of illegitimates is "overinclusive" in that it benefits some children who are legitimated, or entitled to inherit, or illegitimate solely because of a defect in the marriage of their parents, but who are not dependent upon their disabled parent. Conversely, the Act is "underinclusive" in that it conclusively excludes some illegitimates in appellants' subclass who are, in fact, dependent upon their disabled parent. Thus, for all that is shown in this record, the two subclasses of illegitimates stand on equal footing, and the potential for spurious claims is the same as to both; hence to conclusively deny one subclass benefits presumptively available to the other denies the former the equal protection of the laws guaranteed by the due process

provision of the Fifth Amendment. *Id.* at 637 (citations omitted).

Nor are the classifications questioned here in any manner analogous to the permissible presumption examined in the later case of *Mathews v. Lucas, supra.* In *Mathews,* the court sustained an alleged discriminatory classification established by the Social Security Act which had the effect of assuring presumptive eligibility of dependent legitimate children of insured workers while requiring illegitimate children of insured workers to establish their dependency on the deceased person's income. The classifications were held to be a proper administrative aid in avoiding spurious claims since they permitted "any otherwise eligible child [to] qualify for survivors benefits by showing a contribution to support, or cohabitation, at the time of death." *Id.*, 49 L.Ed.2d at 665. Section 402(d), on the other hand, provides no similar opportunity to that classification of eligible recipients who marry totally disabled persons unqualified for benefits under the Social Security Act. For this reason the Secretary's argument must fail.

This discrimination effected in terminating benefits and barring re-entitlement to benefits upon death or divorce of the spouse, is irrational in light of this actual purpose of Congress; especially when that discrimination operates through the enactment of a conclusive, irrebuttable presumption, unwarranted in fact. Sections 202(d)(1)(D) and (d)(5) of the Social Security Act must be declared unconstitutional as violative of equal protection principles under the Due Process Clause of the Fifth Amendment. *Weinberger v. Wiesenfield, supra; Jiminez v. Weinberger, supra; U.S. Department of Agriculture v. Moreno,* 413 U.S. 528 (1973); *U.S. Department of Agriculture v. Murry*, 413 U.S. 508 (1973); cf. *Cleveland Board of Education v. LeFleur,* 414 U.S. 632 (1974); *Valandis v. Kline,* 412 U.S. 441 (1973); *Stanley v. Illinois,* 405 U.S. 645 (1972).

II.

THE DISTRICT COURT DID NOT ERR IN HOLDING THAT THE ACCIDENTAL APPLICATION OF THE SUPPLEMENTAL SECURITY PROGRAM UPON TERMINATION BY THE SECRETARY OF JOBST'S SOCIAL SECURITY PAYMENTS BEARS NO RELATIONSHIP TO THE CONGRESSIONAL BASIS AND CONSTITUTIONALITY OF SECTION 402(d)(5) OF THE SOCIAL SECURITY ACT.

This Court earlier vacated the Judgment and Order of the district court "for reconsideration in light of 42 U.S.C. (Supp. II 1972), 1381, et seq. . . ." (Appx. 11). Upon proper consideration it was concluded that "the enactment of the Supplemental Security Income program, 42 U.S.C. §§1381, et seq., does not relate to the purposes supporting the congressional enactment of the Child's Insurance Benefits Program, as originally enacted in 42 U.S.C. §402(d)." (J.S. App. A, p. 3a). The lower court concluded that the congressional basis of the Supplemental Security Income program, enacted in 1972, simply was unrelated to the Child's Insurance Payments program codified in excess of a decade earlier.

These conclusions are supported by both the congressional history of the statutes concerned and application of accepted rules of statutory construction. The Secretary's averments to the contrary, first raised before this Court more than two years following provision by Congress for the Supplemental Security Income program, confuse the respective bases of the work-based social security program and welfare-based supplemental security income program. The Secretary cannot insist that the Court must consider the congressional purpose of child's disability payments "in tandem" with the welfare-based supplemental security income program because to do so would be inconsistent with accepted rules of statutory construction and the legislative history of the programs

concerned. The trial court correctly considered the congressional purposes of the work-based social security program as dictating the non-applicability of these suggestions of appellant.

It was the duty of the lower court to determine the meaning of the statute, seeking always to accomplish its underlying purpose. *Saltwater Proj. Agr. Dist. v. F.P.C.*, 391 F.2d 470, 474 (D.C. Cir. 1968), *cert. denied sub nom, Ark. Valley G&T, Inc. v. FDC*, 393 U.S. 857 (1969). This judicial duty of the district court required that it take cognizance of the Social Security Act's legislative history and policy, and assure its implementation:

> The legislative establishment of policy carries significance beyond the particular scope of each of the statutes involved. The policy thus established has become itself a part of our law, to be given its appropriate weight not only in matters of statutory construction but also in those of decisional law. *Morange v. States Marines Lines, Inc.*, 398 U.S. 375, 380-381; see also Note, 82 Yale L.J. 258 (1972).

The lower court correctly decided to give congressional pronouncements relating to 42 U.S.C. §§1381 et seq. little weight in terms of showing a rational basis for the discriminatory statutory classifications established in the child's insurance provision in question. In any event the views of one Congress as to the meaning of a statute enacted by an earlier Congress are to be accorded little weight. *United States v. Southwest Cable Co.*, 392 U.S. 157, 170 (1968)

In terms of the standard to judge such discrimination under the Fifth Amendment it is a misleading and dangerous assumption to equate social security payments with supplemental security income in the manner suggested by appellant.

There simply is no constitutional relationship as between the congressional purposes of §202(d) and 42 U.S.C. §§1381 et seq. In codifying Supplemental Security Income, Congress intended only to replace "existing Federally-aided public assistance programs by new federal programs for needy

families and for needy aged, blind or disabled persons."[23] Congress wanted to establish a Federal "welfare system" because the former state-administered programs had "been moving toward a state of crisis and chaos."[24] The statutory scheme Congress chose to utilize remains "need" based, and is antithetical in purpose and intent to the child's insurance payments program:

> The American people have traditionally been sympathetic and willing to help those who are in need. But your Committee believes that the American people do not want a system which results in promoting welfare as a way of life. Your Committee's deliberations therefore, have been aimed toward providing adequate assistance to those who cannot help themselves, while at the same time creating a system of assistance which will maximize the incentive and the obligation of those who are able to work to help themselves.[25]

Most significantly, the lower court's decision recognizes that

> Social Security is not hardship; it is not charity; it is not relief. It is an earned right based upon the contributions and earnings of the individual. As an earned right the individual is eligible to receive his benefits in dignity and self-respect.[26]

Indeed the suggestion of the Secretary that the Court consider the statutory basis of the Supplemental Security Income Program "in tandem" with the child's insurance program is antithetical to the legislative purpose of the secondary benefits program "to provide at least some measure of income and security to those who have lost a wage earner on whom they depended." Secondary benefits were provided

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[23]H. Rep. No. 92-231 (May 26, 1971); U.S. Code Cong. & Adm. News, 1972, at 4990.

[24]*Id.* at 4990-4991, 5012.

[25]*Id.* at 4990.

[26]102 Cong. Rec. 15110 (19).

so the dependents of American workers could *avoid* the "humiliation" of the same test of need appellant now argues must be satisfied by John Jobst:

> Improvement of the American Social Security System should be in the direction of preventing dependency before it occurs and providing more effective income protection *free from the humiliation of a test of need.* Accordingly . . . the committee recommends action designed to immediately bolster and extend a system of old age and survivor's insurance [speaking of earlier secondary benefits].[27] (Emph. added)

The continuing dependency of the child's insurance recipient who marries a totally disabled person remains unaltered regardless of whether the person he marries also receives social security benefits. Section 402(d) nevertheless places child's insurance recipients in two classes: (1) those who marry disabled persons also receiving social benefits, and (2) those who marry non-entitled totally disabled persons. The second class loses its insurance payments without regard to this continuing dependency.

The Secretary insists these classifications are justifiable and do not offend the constitution because they are "not made with mathematical nicety or because in practice it results in some inequality." *Dandridge v. Williams,* 397 U.S. 471, 485 (1970). This argument however ignores the concomitant constitutional requirement that the classification have some "*reasonable basis.*" *Id.*

Citing *Mathews v. DeCastro,* ____ U.S. ____, 50 L.Ed.2d 389 (1976), defendant attempts to build his argument by characterizing Congress' creation of two subclasses of married recipients as merely moving one step at a time to address the problem "which seems most acute to the legislative mind." This argument, however, ignores the fact that a legislature may address a problem one step at a time only "so long as

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[27]S. Rep. No. 1669 (May 17, 1950); U.S. Code Cong. & Adm. News, 1950, Vol. II, p. 3288.

this judgment is rational, and not invidious . . ." *Jefferson v. Hackney,* 406 U.S. 535, 546 (1972). Defendant cannot establish under this argument that Jobst attempts to place "the legislature's efforts to tackle the problems of the poor and the needy . . . to a constitutional straightjacket." *Id.* at 546-547. Discrimination against Jobst simply because of his marriage to a totally disabled non-recipient cannot be justified within the context of continuing dependency upon his father's earnings.

On the other hand, *Mathews v. DeCastro* was decided on the basis of circumstances where there was a "reasonable basis" for the discriminatory classification rooted in the Social Security Act. In the *DeCastro* case the Court sustained a statute which provided benefits to married women whose husbands were retired or disabled if she had a minor child in her care. The statute denies benefits to a divorced woman whose former husband retires or becomes disabled. But this is entirely consistent with the primary objective of the Social Security Act to provide *workers* and their *families* with basic protection against hardships created by the loss of earnings due to illness or old age. "Congress could have rationally assumed that divorced husbands and wives depend less on each other for financial and other support than do couples who stay married. It could rationally decide that the problems created for divorced women remain less pressing than those faced by women who continue to live with their husbands." *Id.*, 50 L.Ed.2d at 396.

This conclusion is entirely consistent with the "predominant purpose" of old-age and disability insurance:

> The old-age and disability insurance aspects of the social security system do not purport to be general public assistance laws that simply pay monies to those who need it most. That was not the predominate purpose of these benefit provisions when they were enacted or when they were amended. Rather, the primary objective was to provide workers and their families with basic protection against hardships created

by the loss of earnings due to illness or old age." *Id.* at 394.[28]

Moreover, in *Mathews v. DeCastro* the classifications existing merely had the effect of deferring "monthly payments to divorced wives of retired or disabled wage earners until they reached the age of 62." *Id.* at 396. In the case of Jobst the legislative classifications permanently bar his receipt of social security benefits.

The Secretary also contends that this disparity of treatment is justified under analogous observations of this Court in *Jefferson v. Hackney*, 406 U.S. 535, 546 (1972), that a state does not violate the equal protection laws merely because the classification made by its laws are imperfect.

If *Jefferson*, the State provided only 75 percent of the established standard of need to ADC recipients, while paying 100 percent of recognized need to the aged, and 95 percent to the disabled and the blind. But the Court did not uphold this disparity of treatment on the basis of the difference between ADC and the other programs. The Court reached its decision instead by applying the rational basis test of the Equal Protection Clause. Accordingly, the Court held, "We cannot say that Texas' decision to provide somewhat lower welfare benefits for AFDC recipients is invidious or irrational . . . [T]he state may have concluded that the aged and infirm are the least able of the categorical grant recipients to bear the hardships of an inadequate standard of living . . . [I]t is not irrational for the State to believe that the young are more adaptable than the sick or the elderly, especially because the latter have less hope of improving their situation in the years remaining to them." 406 U.S. at 549.

[28]Citing H.R. Rep. No. 1300, 81st Cong., 1st Sess., 27-28, 53 (1949); Recommendations for Social Security Legislation, Reports of the Advisory Council on Social Security, S. Doc. No. 208, 80th Cong., 2d Sess., 69-70, 95-97 (1949); S. Rep. No. 2133, 84th Cong., 2d Sess., 3-4 (1956); H.R. Rep. No. 1189, 84th Cong., 1st Sess., 3-6 (1955).

In other words, the Court held that the constitutional validity of such classifications must be determined by whether there is a rational basis for the difference in the treatment to be accorded to the persons placed in the two classes by the statute or regulation. This is quite a different thing than suggesting that Congress here decided to proceed one step at a time in providing social security benefits in accordance with the continuing dependency of the insured wage earner's dependent.

By the same token, it can hardly be alleged that it is rational to believe that the childhood recipients are less dependent because they marry people who are totally disabled who by chance happen to be non-recipients of secondary benefits. As appositely stated with respect to the Equal Protection Clause of the Fourteenth Amendment by Mr. Chief Justice Burger, speaking for the Court in *Reed v. Reed*, 404 U.S. 71, 75 (1971):

> In applying this clause, this Court has consistently recognized that the Fourteenth Amendment does not deny to states the power to treat different classes of persons in different ways. (Citations omitted.) The Equal Protection Clause of that amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by statute (or rule) into different classes on the basis of criteria wholly unrelated to the object of that statute. *A classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly situated shall be treated alike."* * * *

Moreover, as the Court speaking through Mr. Justice Stewart stated in *Rinaldi v. Yeager*, 384 U.S. 305, 308-310 (1966):

> The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes. *McLaughlin v. Florida*, 379 U.S. 184, 189-190. It also imposes a requirement of some rationality in the nature of the class singled out. To be sure, the constitutional demand is not a demand that a

> statute necessarily apply equally to all persons. * * * Hence, legislation may impose special burdens upon defined classes in order to achieve permissible ends. *But the Equal Protection Clause does require that, in defining a class subject to legislation, the distinctions that are drawn have "some relevance to the purpose for which the classification is made."* (Emphasis added.)

As recognized by the District Court, the Secretary's argument must fail because it ignores divergent congressional purposes as between the child's insurance and supplemental security income programs. Social security is intended to provide security for the insured worker and his family, not satisfaction of the needs of welfare recipients as is the case with supplemental security income. This difference in the purposes of Congress in enacting the two statutory schemes is underscored by substantial existing differences in the statutory and regulatory schemes provided for these programs. A childhood disability recipient's monthly income is not reduced because of wages or other earnings as is the case with the SSI recipient (Appx. 14). There is no restriction with respect to the value of assets a child insurance recipient can accumulate (Appx. 15). All income of an SSI recipient above $80 reduces benefit payments by $1 for every $2 received (Appx. 15). The maximum resources an SSI recipient can receive and remain eligible for benefits is $2,250 (Appx. 15). The possession and ownership of real property and liquid resources has no effect on the eligibility of recipients for child's insurance benefits (Appx. 15). Finally, Congress has even discriminated as between level of benefits of the two programs over the last several years (Appx. 13, cf. paras 3, 13).

These important differences in the regulatory schemes of the supplemental security income program as compared to child's insurance benefits also affect the benefits received by Jobst. At the time of the remand of this case to the District Court, the Social Security Administration would have then owed Jobst $9,215.80 in back benefits. The Secretary insists that this level of benefits should be compared on the basis of

aggregate receipt of benefits by Jobst and his former wife, Sandra. This position, applying a standard of need, ignores the fact that even $20 per month could have significant positive impact on the standard of living of a couple with such meager monetary resources. In July of 1976, as a child's insurance recipient Jobst would have received an insurance payment of $183.60, as compared to his monthly SSI award of $118.30. It also ignores avoidance of "humiliation" associated with receipt of welfare benefits. But more importantly, it perverts the true purpose of the child's insurance program to insure the financial security of a dependent who remains in need of the insurance benefits of the worker, regardless of his marriage to another disabled person.

CONCLUSION

The judgment of the District Court should be affirmed.

Respectfully submitted,

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